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**TWYSDEN'S  
HISTORICAL VINDICATION.**

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**CAMBRIDGE:  
1847.**

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Remember the days of old, consider the years of many generations: ask thy father,  
and he will shew thee; thy elders, and they will tell thee.—DEUT. xxxii. 7.

Ask for the old paths, where is the good way, and walk therein, and ye shall find  
rest for your souls.—JER. vi. 16.

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AN  
HISTORICAL VINDICATION  
OF THE  
CHURCH OF ENGLAND  
IN POINT OF  
SCHISM,  
AS IT STANDS SEPARATED FROM THE ROMAN,  
AND WAS REFORMED IN ELIZABETH.

*John B. B. - 1847*

Edited for the Syndics of the University Press,



CAMBRIDGE:  
M. DCCC. XLVII.  
JOHN W. PARKER, LONDON.



SIR ROGER TWYSDEN, the Author of the following Treatise, was the eldest son of William Twysden, Esq. of Royden Hall, in the parish of East Peckham, Kent,—a person of considerable learning, who was advanced to the dignity of a Baronet by King James I. Sir Roger was born in 1597, and inherited his father's studious habits and love of literature, as well as his estates, and a library richly stored with books and manuscripts. It was, however, to the history and antiquities of the civil and religious institutions of England that Sir Roger's reading was more especially directed, and of those subjects his knowledge was unusually extensive and accurate. His steady adherence to the fortunes of his sovereign, Charles I., seems to have brought down upon him the displeasure of the republican party, so that he suffered a long imprisonment, had his estate sequestered, and was permitted to return to his dilapidated possessions only on paying a large pecuniary fine. On recovering his liberty, Sir Roger lived in retirement, and occupied himself chiefly in study. The "Historical Vindication of the Church of England," is one of the results of his learned leisure, and was put forth in consequence of the publication of "A Treatise of the Schism of England," the ostensible author of which was Mr Philip Scot, a gentleman of academical education, who had turned Papist. The first edition of Sir Roger's "Historical Vindication," appeared in 1657, and a second edition in 1675, about three years after the death of the author. The present edition is in many respects a new work, containing as it does some corrections and much additional matter, which have been derived from Sir Roger Twysden's further researches, as recorded in his own hand-writing in the text and on the margin of a copy of the edition of 1657,

now in the Library of the British Museum. The additional facts supplied by the Author from history, and such changes in the wording of the text as he contemplated, have been introduced into the work, correspondently to the indications of Sir Roger's intentions. As a general rule there has been no difficulty in ascertaining the places to which he would have each portion of the new matter assigned, either in the text or in the notes, with the exception of the notes in pp. 43—46. The notes there inserted occur as detached matter in Sir Roger's copy of the book, and therefore occupy their present position on the responsibility of the Editor.

It remains to state that all additional matter found between open brackets [ ] is due to the learning of the Author; and that the matter enclosed between common brackets [ ] has been mainly supplied by the researches of the Rev. C. Hardwick, Fellow of St Catharine's Hall, Cambridge. The Editor is also indebted to the kindness of Mr Hardwick, for transcribing those corrections and additions which the Author left in manuscript, and for verifying the authorities referred to. The figures that will be found in the margin, indicate the paging which is common to the two former editions of this work.

G. E. CORRIE.

CAMBRIDGE, Dec. 12, 1846.

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[The edition of any work which is but seldom quoted, is usually specified when references to that work occur: of the following authorities, from which quotations are more frequent, the editions are here given once for all.

Æmylius Paulus, de Rebus Gestis Francorum	.....	Basil.	1601
Ailredus, de Vita et Miraculis Edward. Confessor. inter Scriptores X. . . . .	.....	Lond.	1652
Ambrosius S., Opp. . . . .	.....	Ed. Benedict. Paris.	1686
Archaionomia, seu de priscis Anglorum Legibus, . . .	.....	Ed. Wheloc. Cantab.	1644
Athanasius S., Opp. . . . .	.....	Paris.	1627
Augustinus S., Opp. . . . .	.....	Basil.	1629
Baronius, Annal. Eccles. . . . .	.....	Moguntiae, 1601—1608	
Beda, Hist. Eccl. . . . .	.....	Ed. Smith, Cantab.	1722
Bellarminus, Disputationes . . . . .	.....	Colon.	1628
Bernardus S., Opp. . . . .	.....	Colon.	1620
Blesensis Pet., Opp. . . . .	.....	Paris.	1667
Bonifacii VIII. (Liber Sextus) Decretal. . . . .	.....	Taurini,	1620
Bromton Johan. Abbas Jorvalensis, Chronica, inter Scriptores X. . . . .	.....	Lond.	1652
Bullarium (Magnum Romanum) . . . . .	.....	Luxemburg.	1727
Camden. Annales Elizabeth. . . . .	.....	Lugdun. Batav.	1625
Caxton's Chronicle . . . . .	.....	Ed.	1482
Cestrensis (Ranulph.) Polychronicon, inter Scriptores XV. . . . .	.....	Oxon.	1691
Clementis V. Constitutiones . . . . .	.....	Taurini,	1620
Codex Justinianii . . . . .	.....	Basil.	1515
Codex Legum Antiquarum . . . . .	.....	Francofurt.	1613
Codex Theodosianus . . . . .	.....	Ed. Gothofred. Lugduni,	1665
Coke's Institutes, {Part I. . . . .	.....	Lond.	1629
{Part III. . . . .	.....		1669
Concilia . . . . .	.....	Ed. Labb. et Cossart.	1671, et seqq.
Contarenus, (Gaspar.) Opp. . . . .	.....	Venet.	1578
Corpus Juris Canonici . . . . .	.....	Paris.	1687
Diceto (Radulph. de) inter Scriptores X. . . . .	.....	Lond.	1652
Dunelmensis (Simeon.) inter Scriptores X. . . . .	.....	Lond.	1652
Eadmerus, Hist. Novorum . . . . .	.....	Ed. Selden.	1623
Eusebius, de Vita Constantini . . . . .	.....	Paris.	1678
Eusebius, Hist. Eccl. . . . .	.....	Ed. Burton,	1838
Eymericus, Directorium Inquisitorum . . . . .	.....	Venet.	1607

Florentius Wigornensis, Chronicon et Continuatio, ad calc. Matth. Westmonast.		Francofurt.	1601
Galfredus Monumetensis, inter Scriptores Vetustior. ac Præcip.		Heidelberg.	1587
Gerson, Opp.		Antwerp.	1706
Gervasius Dorobernensis, inter Scriptores X.		Lond.	1652
Giraldus Cambrensis, inter Camden. Angl. Script.		Francofurt.	1603
Gregorius Magnus, Opp.		Antverp.	1615
Gregorius Nazianzen. Opp.		Paris.	1630
Hagustaldensis, Rich. } inter Scriptores X.		Lond.	1652
Hagustaldensis, Johan. }			
Hall's Chronicle, (Union of the two Families, &c.)		Lond.	1550
Herbert's Life of king Henry VIII.		Lond.	1672
Hieronymus S., Opp.	Ed. Erasm.	Basil.	1526
Hilarius Pictav., Opp.		Paris.	1631
Huntindon Hen. inter Rerum Anglicarum Scriptores		Francofurt.	1601
Ingulphus, inter Rerum Anglicarum Scriptores		Francofurt.	1601
Jorvalensis. (Vid. Bromton)			
Knyghton (Hen. de) inter Scriptores X.		Lond.	1652
Lanfrancus, Opp.		Paris.	1648
Laws, Ancient, of England		Ed. Thorpe.	1840
— (Vid. Archaonomia)			
Leo Magnus, Opp.		Paris.	1639
Lyndewode, Provinciale.		Oxon.	1679
Malmesburiensis W. inter Rerum Anglicarum Scriptores,		Francofurt.	1601
Matthew Paris. (Vid. Paris.)			
— Westmonast. (Vid. Westmonast.)			
Monasticon Anglicanum, { Vol. I.		Lond.	1655
{ Vol. II.		Lond.	1673
Neubrigensis (Gulielm.) inter Scriptores Vetustior. ac Præcip.		Heidelberg.	1587
Nicephorus Callist. Eccl. Hist.		Paris.	1630
Ordericus Vitalis, inter Hist. Normannorum Scriptores.		Paris.	1619
Origen. Opp.		Paris.	1733
Pallavicino, Hist. del Concilio di Trenti		In Roma,	1664
Paris (Matth.) Hist. Major, Vit. Abbat. et Additamenta,		Lond.	{ 1639
Platina, de Vitis Pontif.		Ed.	1664
Polydorus Vergil., Angl. Hist.		Basil.	1570
— de Rerum Inventoribus		Argent.	1606

Radulphus, archiep. Cant. Epist. inter Scriptores X.	Lond.	1652	
Raynaldus (Odoricus), Annal. Eccl.	Rom.	1646	
Rojas (Johan. de), Singularia Juris, etc.	Venet.	1583	
Saresberiensis Johan. Epist.	Paris.	1611	
Selden's Works	Ed. Wilkins.	Lond.	1726
Sigebertus Gemblacensis, Chronica	Ed. Pistorii.	Francofurt.	1583
Sigonius, Histor. de Regno Italizæ	Venet.	1574	
Sleidan, De Statu religionis et reipub. Comment.	Basil.	1556	
Soave (P. Polano), seu P. Sarpi, Histor. del Concil.			
Trident.	Ed.	1629	
Socrates, Hist. Eccl.	Paris.	1668	
Spelman, Concil. Orbis Britan.	{ Tom. I.	Lond.	1639
		Lond.	1664
Stow's Chronicle	Lond.	1614	
Stubbs (Thom.), inter Scriptores X.	Lond.	1652	
Theodoreetus, Eccl. Hist.	Paris.	1673	
Thorn (Wil.), inter Scriptores X.	Lond.	1652	
Thuanus (De Thou), Hist. sui Temporis	Aurel.	1626	

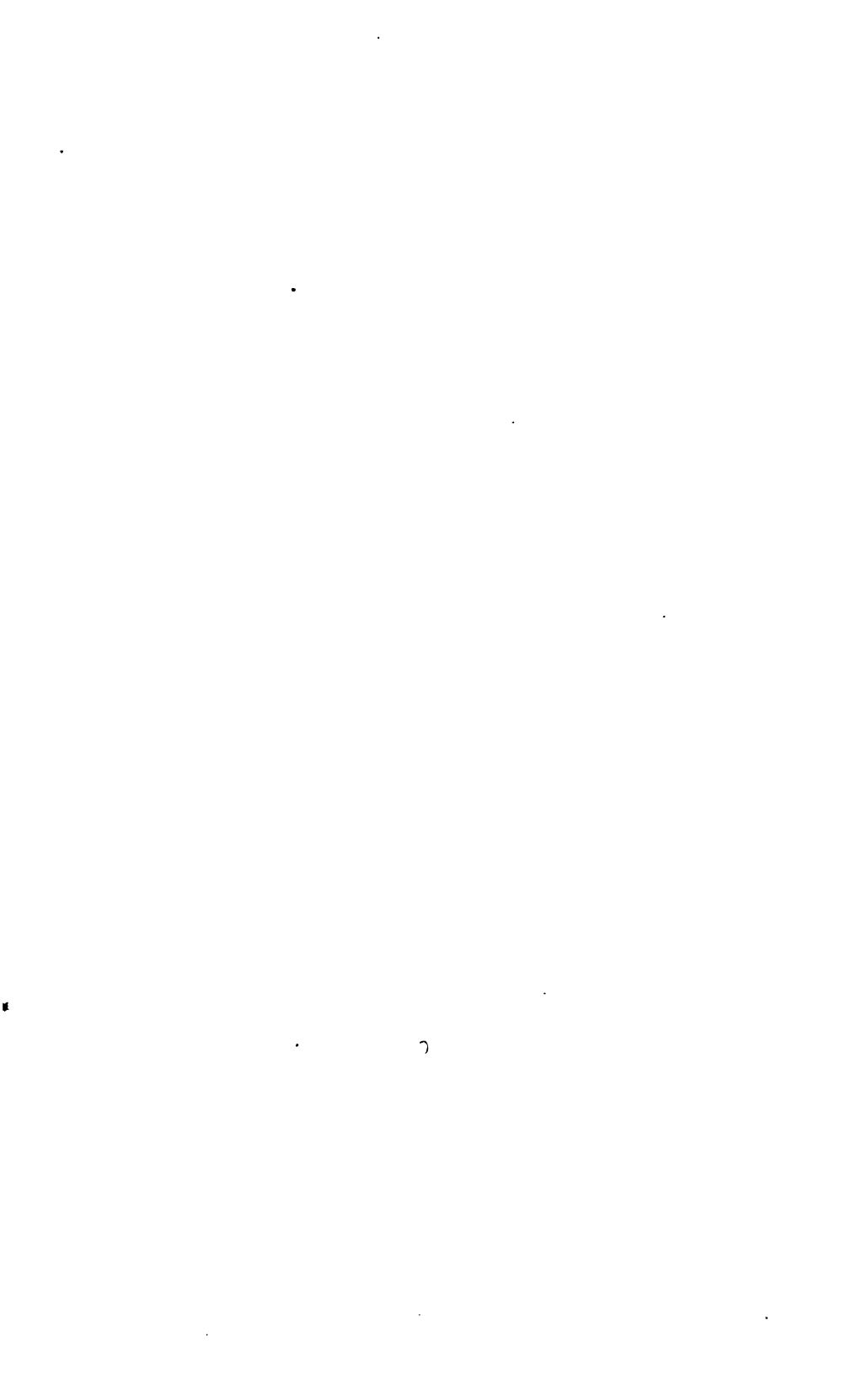
### Vitalis. (Vid. Ordericus.)

Walsingham (Thom.), inter Camden. Angl. Script.	.	Francofurt.	1603
Westmonast. (Matth.) Flores Histor.	.	Francofurt.	1601

As access could not be conveniently had to the same copy of Thomas de Walden's "Fasciculus Zizaniorum," which Twysden used, his references have been verified in the Bodleian MS. No. 163, as follow: that in

p. 7 occurs in fol. 108, b, col. 1, Art. **xli**.  
 — 96 ..... fol. 59, b, col. 2: fol. 60, a, col. 1.  
 — 143 ..... fol. 109, a, col. 2, etc.  
 — 228 ..... fol. 156, b, col. 1. ‘Nullum purgatorium est.’  
 — 234 ..... fol. 107, b, col. 1, Art. **ii**. ‘Substantia panis materialis et  
 similiter substantia vini materialis manent in Sacramento  
 altaris.’  
 — 235 ..... fol. 35, b, col. 1.

"Garnet's face in the ear," p. 232, is an allusion to one of three stories contained in a Tract entitled "The Jesuits' miracles, or new popish wonders (as feigned by H. G.) confuted." Lond. 1607.]



## TO THE READER.

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I KNOW how easily men are drawn to believe, their own observations and expressions may prove as welcome to others, as they are pleasing to themselves. And though few books live longer than the authors, who send them to the press, and fewer avoid an opinion they might have been as well spared as come abroad; yet neither the hazard their makers run, nor the little gain they reap, can hinder those have a genius that way, from suffering others to be as well masters and censurers of their thoughts as themselves.

This being then the venture every writer exposes himself unto, the reader may not a little marvel how I have been brought to hazard myself on the same seas I have seen so many shipwrecked in.

I shall desire him to add this to what is already in the first chapter, as my apology.

Reading some times in Baronius,<sup>1</sup> that all things, were well done in the catholic church, had venerable antiquity for their warrant, and that the Roman church did not prescribe any thing as <sup>2</sup>an holy tenet, but such only as—delivered by the apostles, preserved by the fathers—were by our ancestors transmitted from them to us—I cannot deny to have thought (for certainly truth is more ancient than error) this being made good, and that she did commend them to us, in no other de-

<sup>1</sup> “Veneranda Antiquitas, cuius præscriptio cuncta bene geri in ecclesia catholica consueverunt.” Baron. Annal. Tom. VIII. ad an. 692, v. : [Vid. ann. 646, xii.]

<sup>2</sup> “Non pro arbitrio disserentium, verbiisque pugnantium hominum, …sacra dog-

mata Romana ecclesia definiret; sed quæ ab apostolis tradita, a majoribus deducta, a patribus servata accepisset, hæc ipsa, utpote sacrosancta, universæ ecclesiæ servanda, atque inviolabili lege custodienda, eadem ecclesia Romana præscriberet.” Baron. Tom. VII. ad an. 535, xc.

gree of necessity than those former ages had done, but she had much more reason on her side than I had formerly conceived her to have: but in examining the assertions, it seemed to me not only otherwise, but that learned cardinal not to have ever been in this consonant to himself, <sup>1</sup>confessing the catholic church not always, and in all things, to follow the interpretations of the most holy fathers.

On the other side, it seemed to me somewhat hard to affirm the papacy had encroached on the English, and neither instance when, where, nor how.

Hereupon, as I perused our ancient laws and histories, I began to observe all changes in matters ecclesiastical reported by them; in which I had sometimes speech with that learned gentleman I mention in the first chapter, whom I ever found a person of great candour, integrity, and a true Englishman. I noted likewise how the reformation of religion was begun with us, how cautiously our ancestors proceeded, not to invade the rights of any, but to conserve their own. Many years after, I know not by what fate, there was put into my hands—as a piece not capable of answer, in relation as well to the fact as reason it carried—without at all my seeking after it, or hearing of it, a treatise ‘Of the Schism of England,’ carrying the name of one Philip Scot, but, as told me, composed by a person of greater eminency, dedicated to both universities and printed *permissu superiorum*—truly, in my judgment, neither illiterately nor immodestly writ—but in reading of it, I found sundry particulars, some perhaps only intimated, others plainly set down, I could no way assent unto<sup>2</sup>; as that Cle-

<sup>1</sup> “Sanctissimos patres in interpretatione scripturarum non semper et in omnibus catholicae ecclesiae sequitur.” Tom. I. ad an. 34, ccxii.

<sup>2</sup> [Who before Alexander III. did fancy the archbishop of Canterbury might *jure legationis* do that he might not do in England *jure metropolitico*? he being esteemed *quasi alterius orbis papa*. Who

required of him and other inferior prelates an oath testifying their dependence on the papacy before Paschalis II. and Gregory IX.? Who then wrote himself *Dei et apostolice sedis gratia episcopus*? as not being without his allowance. Which pope in the diocese of another before Innocentius III. granted *non obstantes* or letters of *perinde vulere*?]

ment VII. neither did exercise nor require other superiority in the church than Gregory the Great had done<sup>3</sup>, that the religion brought hither by Augustine varied not from that was before the reformation, that the English made the separation from the church of Rome, that in doing so we departed from the church catholic.

I was not ignorant it might be found in the writings of some protestants, as if we departed from Rome; which I conceive is to be understood in respect of the tenets we separate from holding articles of faith, not of the manner how it was made.

Having gone through the book, I began to look over my former notes, and putting them for my own satisfaction in order, found them swell farther than I expected—*urceum institui, exit amphora*—and when they were placed together, I shewed them to some very good friends, to whose earnest persuasions (being such as might dispose of me and mine) I have in the end been forced to yield, making thee partaker of that I never intended should have passed farther than their eyes.

Yet in obeying them I shall desire to be rightly understood; that as I do not in this take upon me the disputing the truth of any controversial tenet, in difference between us and the church of Rome, so I meddle not with any thing after Pius Quintus came to the papacy; who first by private practices, and then open excommunication of her majesty, declared himself an enemy, and in open hostility with this state: which therefore might have greater reason to prevent his endeavours, by some more sharp laws against such as were here of his inclination, than had been seen formerly; with which I meddle not.

<sup>3</sup> [Who taught then transubstantiation an article of faith, as it is now declared in the council of Trent? (Sess. xiii. c. 3.) Who held another canon of

scripture as θεόπνευστα than the church of England now doth? Who denied the cup to the lay without the pope's assent?]

Thus the reader hath the truth, both how I came to compose, and how to print this. If he find any thing in it like him, he must thank the importunity of others; if to misdoubt, I give him in the margin what hath led me to that I affirm; if to dislike, his loss will not be great either in time or cost: and perhaps it may incite him to do better in the same argument, and shew me my errors, which—proceeding from a mind hath not other intent than the discovery of truth—no man shall be gladder to see and readier to acknowledge than

ROGER TWYSDEN.

From my house in EAST PECKHAM,  
the 22 *May*, M.DC.LVII.

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AN  
HISTORICAL VINDICATION  
OF  
THE CHURCH OF ENGLAND  
IN POINT OF SCHISM.

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CHAPTER I.

IT is now almost twenty years since, defending the church of England as it was settled 1<sup>o</sup> Eliz., for the most perfect and conformable to antiquity of any in Europe, a <sup>1</sup>gentleman, whose conversation for his learning I very much affected, told me, he was never satisfied of our agreeing with the primitive church in two particulars; the one in denying all manner of superiority to the bishop of Rome, to live in whose communion the east and western Christian did ever highly esteem: the other in condemning monastic living, so far, as not only to reform them, if any thing were amiss, but to take down the very houses themselves. To the first of these I said, we did not deny such a primacy in the pope as the ancients did acknowledge; but, that he by that might exercise those acts he of some years before Henry VIII. had done, and had got by encroaching on the English church and state merely by their tolerance, which when the kingdom took to redress and restrain him in, he would needs interpret a departing from the church; yet if any made the departure, it must be the pope, the kingdom standing only on those rights it had ever used for its own preservation, which putting in practice, it was interdicted the king, excommunicated by him, &c. To which he replied in effect, that of Henry VIII. in his book against Luther, that it was very incredible the pope could do those acts he had sometimes exercised here by encroachment; for how could he gain that power and none take notice of it? That this argument

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[<sup>1</sup> Sir Basil Brook.]

could have no force if not made good by history, and those of our own nation, how he had increased his authority here. Which, truly, I did not well see how to deny, farther than that we might by one particular conclude of another ; as, if the church or state had a right of denying any clerk going without licence beyond seas, it must follow, it might bar them from going, or appealing to Rome : if none might be acknowledged for pope without the king's approbation, it could not be denied but the necessity of being in union with the true pope (at least in time of schism) did wholly depend on the king. And so of some other.

2. As for the other point of monasteries, I told him, I would not take upon me to defend all that had been done in demolishing of them ; I knew they had nourished men of piety and good learning, to whom the present age was not a little beholding ; for, what do we know of any thing past but by their labours ? That divers well affected to the reformation, and yet persons of integrity, do hold their standing might have continued to the advancement of literature, the increase of piety, and relief of the poor. [Which seems the more probable, for that within less than ten years after their dissolution, there was foreseen so great ignorance likely to break in on this nation, as <sup>2<sup>o</sup></sup> Edw. VI. there was a bill passed the 'commons for men to give lands for finding free schools ; which, meeting elsewhere some stop, we find the next session of parliament again revived for passage. And for the poor, they since are so much increased, and charity so greatly decayed, as the persuasive acts of former princes, for the relief of them, have been made <sup>1</sup>compulsory, and men encouraged <sup>2</sup>to erect hospitals, maisons de Dieu, etc., and endow them with lands, for the supportation of those, who ashamed to beg have not the means of sustaining themselves. And what did religious houses at first differ from these ? Certainly the founders erected them with no other intent than, <sup>4</sup>*pur Dieux servir et honurer plus devoutement, et auxi pur hospitalitee tenir, et pur enformer et enseigner le poeple et faire les autres choses appartenantz a cure des*

<sup>1</sup> Journals of the House of Commons, <sup>2<sup>o</sup></sup> Edw. VI. Jan. 23 ; Feb. 9 ; <sup>3<sup>o</sup></sup> Edw. VI. Decem. 7.

<sup>2</sup> The first Act to compel men to their relief was <sup>5<sup>o</sup></sup> Eliz. c. 3. See 1<sup>o</sup> Edw.

VI. c. 3 ; <sup>2<sup>o</sup> & 3<sup>o</sup></sup> Phil. & Mary, c. 5.

<sup>3</sup> 3<sup>o</sup> Eliz. c. 5 ; made perpetual 2<sup>o</sup> Jac. c. 1.

<sup>4</sup> Rotuli Parl. <sup>3<sup>o</sup></sup> Ric. II. § 37 ; <sup>20<sup>o</sup></sup> Edw. III. § 35. Vid. <sup>3<sup>o</sup></sup> Ric. II. c. 3.

aines, solonc l'estat et la qualite de dictes benefices,' etc. If afterward the oaths by them taken to the see of Rome gave the king occasion of jealousy, and the making vows, not in their power to observe, rendered some of them obnoxious to scandal, I conceive the profession might not absolutely be therefore unlawful, though those might be fitly removed.] That the king when he took them down was the greatest loser by it himself. Whose opinions I would not contradict, yet it could not be denied, they were so far strayed from their first institution, as 3 they retained little other than the name of what they were at the beginning.

3. [I did easily grant the greatest scandal lay upon the protestant profession, was the invading those revenues power had a good part in depriving the possessor of: and that with so much heat and haste, as gave in several parts, I fear, hardly leisure to consider whether what remained were a tolerable maintenance for the incumbent and alms for the poor, joint <sup>5</sup>proprietor with him. But let it avail to speak truth: was this the desire of those were truly grieved with the burden of popery and sincerely desired a pious reformation of the church? I fear nothing less; but of some grandees, who, by the spoil of others intended their own greatness (to many of whom it hath proved little other than *'aurum Tolosanum*, not much of it now remaining with their posterity). For proof of which, I need not go far, <sup>7</sup>when divers of the visitors employed to spy what faults they could, and no enemies to a just reformation, did petition some houses of religion might be spared, both for the virtue of the persons in them, and benefit of the country. And Latimer, a glorious martyr, laboured <sup>8</sup>two or three of them might in every shire be left for pious uses, whilst Cromwell, no protestant, invaded all.

4. There is no question a prince may with less envy raise money from the ecclesiastic than the lay; they, being for the most a body from whom it comes which is rich, not subject to

<sup>5</sup> Si autem privatim quæ nobis sufficiant possidemus, non sunt illa nostra sed pauperum, quorum procurationem quodam modo gerimus, non proprietatem nobis usurpatiōne damnablem vendicamus. S. August. Ep. l. [Opp. Tom. II. p. 145 A.]

<sup>6</sup> Aulus Gellius, Noct. Attic. Lib. III. c. 9. [§ 3.]

<sup>7</sup> Herbert's Hist. of Henr. VIII. p. 506. [ed. 1672.]

<sup>8</sup> Bp. Latimer's Remains, p. 411, Parker Soc. Ed.]

so great expenses as the temporality, may be therefore held better able to spare it than particulars (as it hath been <sup>1</sup> observed they did oftener pay tenths than the lay fifteenths): but it is a dangerous precedent, even for the lay themselves, to take from them what by law and long continuance is settled on them. For when the ice is once broken for a king extraordinarily to supply himself by assuming the estates of private men, of what condition soever they be, it is hard to say where it will stop; and therefore hath been so rarely put in execution, as I do hardly find an example (unless the estates of the Templars, already dissolved, transferred to the Hospitalers, an act of ill<sup>2</sup> relish and various interpretation, serve for one) before Hen. VIII. who <sup>3</sup>in the 27th year of his reign took, by gift of parliament, to himself all religious houses not having yearly two hundred pounds, and were under the number of twelve in family, making honourable mention of the greater houses (which yet in the printed books is omitted<sup>4</sup>). The Act 31<sup>o</sup> Hen. VIII. took them away. A.D. 1544, the 36th of his reign, the first of any king since the conquest, (so far as I have observed) he <sup>5</sup>adulterated his coin. The Act 37<sup>o</sup> Hen. VIII. left all the little remainder of <sup>6</sup>colleges for learning, chantries, &c. at the king's disposal, so that there was (to my understanding) nothing of public now remaining to be taken from that body. Certainly it was more than his majesty did think fit to make use of, or the parliament <sup>7</sup>to continue or trust Edward VI. with; who, finding no more help that way, were forced to aid him with a new<sup>8</sup> invention of relief for three years, out of sheep, cloths, goods, debts, &c. so heavy as the year <sup>9</sup>following they were constrained to desire his majesty's mitigation, the clothier being in a manner discouraged from making cloth. Yet I cannot find all this made the crown rich. Hayward <sup>10</sup>observes Edward VI.'s debts were two hundred and fifty one thousand pounds; at least said to be so. Camden <sup>11</sup>, that queen Elizabeth received

<sup>1</sup> Thom. Walsingham, Histor. A.D. 1404, p. 372, l. 39, etc. [inter Camden. *Anglica Scripta.*]

<sup>2</sup> Vid. Burdet. *Petit. apud Winton.* 4<sup>o</sup> Edw. III. r. 29, et claus. 6<sup>o</sup> Edw. III. membr. 5. [This reference seems to be to *Rotul. Parl.* 4<sup>o</sup> Edw. III. *Petit. 62.*]

<sup>3</sup> 27<sup>o</sup> Hen. VIII. c. 28.

<sup>4</sup> 31<sup>o</sup> Hen. VIII. c. 13.

<sup>5</sup> Herbert, p. 510.

<sup>6</sup> 37<sup>o</sup> Hen. VIII. c. 4.

<sup>7</sup> 1<sup>o</sup> Edw. VI. c. 14.

<sup>8</sup> 2<sup>o</sup> and 3<sup>o</sup> Edw. VI. c. 36.

<sup>9</sup> 3<sup>o</sup> and 4<sup>o</sup> Edw. VI. c. 23.

<sup>10</sup> *Life of Edw. VI.* p. 155. [Lond. 1630.]

<sup>11</sup> *Annales Eliz.* A.D. 1558. [p. 5, ed. 1675.]

the crown *afflictissima,.....aere alieno quod Henricus VIII. et Edwardus VI. contraxerant oppressa.* And this after so great contributions, as for my part, what with subsidies and other gifts, I cannot but reckon the treasure spent in fifteen years, more than half the kingdom to be sold. I shall add no more but during the time religious houses remained, there was no fear of a decay of learning in respect of the many preferments; for <sup>12</sup>*sint Mæcenates, non deerunt Marones*, which was soon after, as we have seen, espied.]

5. Upon this I began to cast with myself how I could historically make good what I had asserted, which in general I held most true, yet had not at hand punctually every circumstance, law, and history that did conduce unto it: in reading, therefore, I began to note apart what might serve for proof any way concerning it. But that gentleman with whom I had this speech being not long after taken away, I made no great progress in it; till some years after, I was constrained to abide in <sup>13</sup>London (sequestered, not only from public, but even the private business of my estate). I had often no other way of spending my time but the company a book did afford; insomuch as I again began to turn over our ancient laws and histories, both printed and written, whereof I had the perusal of divers of good worth: whence I collected many notes, and began farther to observe the question between us and the church of Rome in that point, not to be whether our ancestors did acknowledge the pope successor of St Peter, but what that acknowledgement did extend to; not whether he were vicar of Christ, had a power from him to teach the word of God, administer the sacraments, direct people in the spiritual ways of heaven—for so had every bishop, amongst which he was ever held by them the first, *pater maximus in ecclesia*, as one to whom emperors and christians had not only allowed a primacy, but had left behind them why they did it, *Sedis apostolice primatum sancti Petri meritum, qui princeps est episcopalis coronæ et Romanæ dignitas civitatis, sacræ etiam synodi firmarit auctoritas*<sup>14</sup>, says Valentinian, A.D. 445; on which grounds, if he will accept it, I know no reason to deny his being prime—but

<sup>12</sup> Martial, Epigr. Lib. VIII. 56.

tory notice.]

[<sup>13</sup> This persecution was owing to Twysden's unflinching loyalty in the cause of K. Charles I. See Introduc-

<sup>14</sup> Theodos. Leges Novelle, Lib. I. Tit. xxiv. [ad calc. Codic. Theodosian. Ed. Gothofred. Lugduni, 1665.]

whether they conceived his commission from Christ did extend so far as to give him an absolute authority over the church and clergy in England, to redress, reform, correct, amend all things in it, not by advice, but as having power over it, with or against their own liking, and farther to remove, translate, silence, suspend all bishops, and others of the spirituality. In short, to exercise all ecclesiastic authority within this church above any whatsoever; so as all in holy orders (one of the three estates of the kingdom) solely and supremely depended on him, and he on none but Christ; and whether our forefathers did ever admit him with this liberty of disposing in the English church. [It is not to be denied the Saxons<sup>1</sup> as they were converted by preachers sent from Rome, so in their troubles they received assistance of wholesome advices and fatherly instructions from thence: without (so far as I know) the papacy ever pretending a right of dispensing with the ecclesiastical canons, farther than the bishops in each diocese and the archbishop in his province might, or bestowing preferments or benefices within others' jurisdiction by letters of *Non obstante, Ante-ferri, Perinde valere*, or the like.]

6. To wade through which question there was an eye to be cast on all the times since Christ was heard of in England, and therefore to be considered how christianity stood upon the conversion of the Britons, the Saxons, and since the irruption of the Normans. Under the first of these we have but little, under the second somewhat, yet not much; under the third the papacy swelled to such a height, that some parts have been constrained to cast it off, and England without his assent in that point so to reform itself, as to declare<sup>2</sup> "no manner of speaking, doing, communication, or holding against the bishop of Rome, or his pretended power or authority, made or given by human laws [and policies, and not by holy scripture.....] shall be deemed to be heresy." By which it seems those episcopal functions he did exercise in common with other bishops, (as baptizing, conferring holy orders, &c.) it did not deny to be good and valid of his administration.

7. But what those particulars were human laws had con-

[<sup>1</sup> This seems to require some limitation. Bishops from Ireland converted a great portion of the Pagan Saxons. Vid. Bed. Lib. III. c. 21, 22, for the labours

of Finanus and Cedd; and Lib. III. c. 3, 4, 5, for those of Aidan and Columba.]

<sup>2</sup> Stat. 25<sup>o</sup> Hen. VIII. c. 14. [§ 7.]

ferred upon the papacy, and by what constitutions or canons those pre-eminentes were given him, was the thing in question, and not so easy to be found, because indeed gained by little and little, [not to be concluded on from phrases in epistles or writings to him (wherein oftentimes is used excess of reverence to meaner persons, much more to so great a prince and patriarch), nor by commands sent hither from him ; but by obedience here yielded, by the manner of exercising what came, and by laws made for regulating of his missives.] I cannot but hold truth more ancient than error, every thing to be firmest upon its own bottom, and all novelties in the church to be best confuted by shewing how far they cause it to deviate from the first original. I no way doubt but the religion exercised by the Britons before Augustine came, to have been very pure and 5 holy : nor that planted after from St Gregory, though perhaps with more ceremonies and commands, *juris positivi*, which this church embraced, rejected, or varied from, as occasion served, to be other ; but in the foundation most sound, most orthodox ; that holy man never intending such a superiority over this church as after was claimed. The bishops of England, in their condemnation of Wicliff's opinions, do not at all touch upon those concerned<sup>3</sup> the pope's supremacy ; and the 'council'<sup>4</sup> of Constance that did censure his affirming, *Non est de necessitate salutis credere Romanam ecclesiam esse supremam inter alias ecclesias*, doth it with great limitations, and as but an error : *Error est si per Romanam ecclesiam intelligat universalem ecclesiam, aut concilium generale, aut pro quanto negaret primatum summi pontificis super alias ecclesias particulares*. I conceive therefore the basis of the pope's or church of Rome's authority in England, to be no other than what, being gained by custom, was admitted with such regulations as the kingdom thought might stand with its own conveniency ; and therefore subject to those<sup>5</sup> stipulations, contracts with the papacy, and pragmatiques it at any time hath made or thought good to set up, in opposition of extravagancies arising thence. In the re-

<sup>3</sup> Apud Hen. de Knyghton, col. 2648 [inter Scriptores x. Hist. Anglican.] and in Fasciculo Zizaniorum MS. fol. 64, a, col. 1.: in Biblioth. Archiepisc. Arma- chan.

<sup>4</sup> Concil. Constant. Sess. viii. Art.

41. [in Concil. ed. Labb. Tom. XII. 47.]

<sup>5</sup> Vide Concordata inter Hen. II. et Alexand. III. A.D. 1172 : Edw. III. et Greg. XI. A.D. 1372—1374 : Hen. V. et Martin. V. A.D. 1418. [in Rymer. Fo- der. et Act. Public. sub ann.]

formation therefore of the church of England, two things seem to be especially searched into, and a third arising from them fit to be examined.

I. Whether the kingdom of England did ever conceive any necessity, *jure divino*, of being under the pope united to the church and see of Rome, which draws on the consideration how his authority hath been exercised in England under the Britons, Saxons and Normans; what treasure was carried annually hence to Rome; how it had been gained, and how stopped.

II. Whether the prince with the advice of his clergy was not ever understood to be endued with authority sufficient, to 6 cause the church within his dominions to be by them reformed, without using any act of power not legally invested in him, which leads me to consider what the royal authority *in sacris* is. (1) In making laws that God may be truly honoured; (2) things decently performed in the church; (3) profaneness punished, questions of doubt by their clergy to be silenced.

III. The third how our kings did proceed, especially queen Elizabeth (under whose reformation we then lived), in this act of separation from the see of Rome, which carries me to shew how the church of England was reformed by Henry VIII., Edward VI., and queen Elizabeth. Wherein I look upon the proceedings abroad and at home against heretics, the obligation to general councils, and some other particulars incident to those times.

I do not in this at all take upon me the disputation, much less the theological determination of any controverted tenet (but leave that as the proper subject to divines); this being only an historical narration how some things came amongst us, how opposed, how removed by our ancestors, who—well understanding this church not obliged by any foreign constitutions, but as allowed by itself; and either finding the inconvenience in having them urged from abroad farther than their first reception here did warrant; or that some of the clergy enforced opinions as articles of faith, were no way to be admitted into that rank—did by the same authority they were first brought in (leaving the body or essence, as I may say, of christian religion untouched,) make such a declaration in those particulars, as conserved the royal dignity in its ancient splendour, without at all invading the true legal rights of the state ecclesiastical, yet might keep the kingdom in peace, the people without distraction, and the church in unity.

## CHAPTER II.

### OF THE BRITONS.

I SHALL not here inquire who first planted christian religion 7 amongst the Britons, whether <sup>1</sup>Joseph of Arimathea, <sup>2</sup>Simon Zelotes, <sup>3</sup>St Peter, or Eleutherius, neither of which wants an author; yet I must confess it hath ever seemed to me—by their alleging the 'Asian forms in celebrating Easter, their differing from the rites of Rome<sup>5</sup> in several particulars, of which those of most note were, that of Easter, and baptizing after another manner, than the Romans used; their often journeying to Palestina—that they received the first principles of religion from Asia. And if afterward Cœlestinus the pope did send (according to <sup>6</sup>Prosper) Germanus, *vice sua*, to reclaim them from Pelagianism, certainly the inhabitants did not look on it, as an action of one had authority, though he might have a fatherly care of them as of the same profession with him, as a <sup>7</sup>synod in France likewise had, to whom in their distress they address themselves, to which Beda attributes the help they received by Germanus and Lupus.

2. After this as the Britons are not read to have yielded any subjection to the papacy, so neither is Rome noted to have taken notice of them. For Gregory<sup>8</sup> the great, about 590, being told certain children were *de Britannia insula*, did not know whether the country were christian or pagan; and when Augustine came hither<sup>9</sup> and demanded their obedience to the church of Rome, the abbot of Bangor returned him answer:

<sup>1</sup> Baron. [Annal.] Tom. I. ad an. 35. v.

<sup>2</sup> Niceph. Callist. [Eccles. Hist.] Lib. II. c. 40.

<sup>3</sup> Metaphrast. [Commentar. de Petro et Paulo, ad diem 29] Junii: de eo vid. Baron. Tom. I. ad an. 44, xxvii: Bed. [Hist. Eccl.] Lib. I. c. 4.

<sup>4</sup> Bed. [Hist. Eccl.] Lib. III. c. 25: conf. Euseb. Hist. Lib. v. c. 24.

<sup>5</sup> In multis [quidem] nostræ consuetudini...contraria geritis. Augustin. Bri-

tonibus, apud Bed. Lib. II. c. 22, [p. 80.]

<sup>6</sup> Prosper. in Chronico, A. D. 432. [Tom. I. p. 50, in Nov. Biblioth. MS. Libr. Paris. 1657; ed. Labb.]

<sup>7</sup> Bed. Lib. I. c. 17.

<sup>8</sup> Johan. Diacon. in vita Gregor. c. 21. [prefixed to the works of Gregory, ed. Antwerp. 1615.]: Bed. Lib. II. c. 1. [p. 78.]

<sup>9</sup> Spelman. Concil. [Tom. I.] p. 108.

“That they were obedient to the church of God, to the pope of Rome, and to every godly Christian, to love every one in his 8 degree in charity, to help them in word and deed to be the children of God; and other obedience than this they did not know due to him, whom he named to be pope, nor to be father of fathers.”

3. The abbot's name that gave this reply to Augustine seems to have been Dinoot, and is in effect no other than what <sup>1</sup>Geoffrey of Monmouth hath remembered of him, that being *miro modo liberalibus artibus eruditus, Augustino petenti ab episcopis Britonum subjectionem... diversis monstravit argumentationibus ipsos ei nullam subjectionem debere*; to which I may add, by the testimony of <sup>2</sup>Beda, their not only denying his propositions, *sed neque illum pro archiepiscopo habiturum respondebant*. And it appears <sup>3</sup>by Giraldus Cambrensis, this distance between the two churches continued long, even till Henry the first induced their submission by force; before which, *episcopi Walliae a Menevensi antistite sunt consecrati, et ipse similiter ab aliis tanquam suffraganeis est consecratus, nulla penitus alii ecclesiae facta professione vel subjectione*. The generality of which words must be construed to have reference as well to Rome as Canterbury; for, a little after, he shews that though Augustine called them to council, as a legate of the apostolic see, yet returned, they did proclaim they would not acknowledge him an archbishop, but did contemn both himself and what he had established.

4. Neither were the Scots in this difference any whit behind the Britons, as we may perceive by the <sup>1</sup>letter of Laurentius, Justus, and Mellitus, to the bishops and abbots through Scotland; in which they remember the strange perverseness of one Daganus, a Scottish bishop, who upon occasion coming to them did not only abstain eating with them, but would not take his meat in the same house they abode, yet they salute them with the honourable titles of their dearest lords and brethiren. A certain sign of a wide distance between the opinions of Rome

<sup>1</sup> Galfred. Monumetensis [Hist. Regum Britan. Lib. xi. c. 12 : inter Scriptores Vetust. ac Præcip. ed. Heidelberg. 1587.]

<sup>2</sup> [Bed. Hist. Eccl.] Lib. ii. c. 2.

<sup>3</sup> Girald. Itinerarium Cambr. Lib. ii. c. 1.. [p. 856, l. 10, &c. inter Camden. Anglica Script.]

<sup>4</sup> [Apud Bed. Lib. ii. c. 4.]

then and now, when men are taught not so much as <sup>5</sup>bid them farewell, do not submit unto it. Sure our first bishops knew no <sup>9</sup> such rule, who placed in their calendar for saints and holy men, as well Hilda, Aidan, and Colman, the opposers of Rome, as Wilfred, Agilbertus, and others, who stood for it.

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<sup>5</sup> Baronius, Parænesis ad Rempub. Venetam. [p. 37; Rom. 1606]: Atque his tandem finis esto; sed doleo vehe- menter, quod absque, valete. Johannes enim Apostolus id vetat facere, et cum

eo omnis simul ecclesia quod indignos salutatione juste judicet eos, qui non communicantes Romanæ ecclesiæ omnis penitus sunt salutis expertes. (2 Johan. v. 10.)

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### CHAPTER III.

#### OF THE INCREASE OF THE PAPAL POWER IN ENGLAND UNDER THE SAXONS AND NORMANS, AND WHAT OPPOSITIONS IT MET WITH.

ATTER the planting of christian religion amongst the Saxons, the archbishop of Canterbury became a person so eminent, all England was reputed<sup>1</sup> his diocese; in the college of bishops, 'London his dean, whose office it was to<sup>3</sup> summon councils; Winchester his chancellor; 'Salisbury, or (as some) Winchester his precentor, or that began the service by singing; <sup>5</sup>Worcester, or rather Rochester, his chaplain, and the other the carrier of his cross: 'expected no less obedience from York, than himself yielded to Rome', *voluntate et beneficio*; it being the opinion of the church of England, it was but equal, <sup>8</sup>*ut ab eo loco mutuentur vivendi disciplinam, a cuius somite rapuerunt credendi flamman*. The dependence therefore of the clergy in England being thus wholly upon the archbishop, it will not be amiss to take a little view both of what esteem he was in the church, and how it came to be taken off, and by degrees transferred to a foreign power.

2. Upon the conversion of the Saxons here by the preaching of Augustine and his companions, and a quiet peace settled <sup>10</sup>under Theodore, to whom<sup>9</sup> all the English submitted, <sup>10</sup>parochial churches by his encouragement began to be erected, and the bishop of Rome greatly reverenced in this nation, as being the

<sup>1</sup> Eadmer. [Hist. Novorum] p. 12, 1. 49 : p. 137, 1. 1. Gervas. Dorobernensis [Actus Pontif. Cantuar. inter Scriptores x.] col. 1661, 1. 54.

<sup>2</sup> Lyndewode, [Provinciale] Lib. v. de Poenis, § Tanquam, [p. 317].

<sup>3</sup> Gervas. Dorob. [Chronica] col. 1566, 1. 10.

<sup>4</sup> [Salisbury] Lyndewode, ubi supra: [Winchester] Gervas. Dorob. col. 1382, 1. 61 : col. 1429, 1. 23.

<sup>5</sup> [Worcester] Lyndewode, ubi supra: Gervas. Dorob. col. 1566, 1. 1: [Rochester] Gervas. Dorob. col. 1382, 1. 59;

col. 1567, 1. 67.

<sup>6</sup> W. Malmesbur. [de Gestis Pontif. Angl. Lib. 1. p. 213, 1. 11]: Radulph. de Diceto [Abbreviationes Chronicorum, inter Scriptores x.] col. 437, 1. 64.

<sup>7</sup> Radulph. Archiep. Cant. Epist. inter Scriptores x. col. 1736, 1. 17.

<sup>8</sup> W. Malmesbur. ubi supra, p. 212, 1. 47.

<sup>9</sup> Bed. Lib. iv. c. 2.

<sup>10</sup> Lib. MS. in Aula Trinitatis Cantab. [A Chronicle of the Monastery of St Augustine, Canterbury; the reference in the text is to fol. 28, a, col. 2.]

successor of St Peter, the first bishop of the world, patriarch of the west, that resided in a town<sup>11</sup> held to nourish the best clerks in christendom, and the seat of the empire: insomuch, as the devout Briton, who seems (as I said) to have received his first conversion from Asia<sup>12</sup>, did go to Judea as a place of greatest sanctity, so<sup>13</sup> amongst the Saxons, *Romam adire magnæ virtutis estimabatur*. But, as this was of their part no other than as to a great doctor or prelate, by whose solicitude they understood the way to heaven, and to a place in which religion and piety did most flourish; so the instructions thence were not as coming from one had dominion over their faith, the one side not at all giving, nor the other assuming other than that respect is fit to be rendered from a puisne or less skilful to more ancient and learned teachers. As of late times, when certain divines at Frankfort, 1554, differed about the Common Prayer used in England, Knox and Whittingham appealed to Calvin for his opinion; and receiving his cc. epistle,<sup>14</sup> “it so wrought in the hearts of many, that they were not so stout to maintain all the parts of the Book of England as afterward they were bent against it.” And doctor Cox and some other, who stood for the use of the said book, wrote unto him,<sup>15</sup> “excusing themselves that they put order in their church without his counsel asked.” Which honour they shewed him, not as esteeming him “<sup>16</sup>to have any authority of office over them, but in respect of his learning and merits.”

3. As these therefore carried much honour, and yielded great obedience to Calvin, and the church of Geneva, by them then held<sup>17</sup> “the purest reformed church in christendom;” so it cannot be denied but our ancestors, the Saxons, attributed no less to the pope and church of Rome, who yet never invaded 11 the rights of this as contrary to the<sup>18</sup> council of Ephesus, and the canons of the church of<sup>19</sup> England; but left the government of it to the English prelates, yet giving his best advice and assistance

<sup>11</sup> Hall [Unyon of the Twoo Famelies of Lancastre and Yorke] 20<sup>o</sup> Hen. VIII. fol. 179.

<sup>12</sup> Divisus ab orbe nostro Britannus, si in religione processerit . . . quærit locum fama sibi tantum et Scripturarum relatione cognitum. Epist. Paulæ et Eustochii ad Marcellam, ut commigret Bethlehem, inter Opp. S. Hieronym.

script. circa an. 386 [Tom. I. p. 126, D.]

<sup>13</sup> Bed. Lib. iv. c. 23. [p. 168, 1. 35.]

<sup>14</sup> Troubles at Frankford, p. xxxvi. ed. 1575.

<sup>15</sup> Ibid. p. li.

<sup>16</sup> Ibid. p. cxlvii.

<sup>17</sup> Ibid. p. xl ix.

<sup>18</sup> [Concil. ed. Labb. Tom. III. 802.]

<sup>19</sup> Bed. Lib. iv. c. 5.

for increasing devotion, and maintenance of the laws ecclesiastical amongst them, in which each side placed the superiority. From whence it proceeded that however the pope was sought to from hence, he rarely sent hither any legate. In the council of Calcuith, held about 180 years after Augustine, it is observed<sup>1</sup>, *a tempore sancti Augustini pontificis, sacerdos Romanus nullus in Britanniam missus est, nisi nos.* <sup>2</sup> And Eadmerus, that it was *inauditum in Britannia, quemlibet hominum super se vices apostolicas gerere, nisi solum archiepiscopum Cantuarie.*

4. But after the pope instead of being <sup>3</sup>subject, began to be esteemed above the ecclesiastic canons, and to pretend a [sole] power of altering and dispensing with them, and what past by his advice and counsel only, [he would have] said to be by his authority, he did question divers particulars had been formerly undoubtedly practised in this kingdom, he seeing them, and not shewing any dislike at it; as <sup>4</sup>the receiving investitures of churches from princes, <sup>5</sup>the calling synods, the determining causes ecclesiastical without appeals to Rome, the transferring bishops, &c.; but the removing these from England unto a foreign judicature, being as well in diminution of the rights of the crown as of this church, passed not without opposition.

5. For Anselm, a native of Italy [where the necessity of subjection to the Roman chair was but<sup>6</sup> newly introduced, and therefore more pressed by the devoted to it], pretending he ought not to be barred of visiting the vicar of St Peter<sup>7</sup>, *causa regiminis ecclesiae, [causa suæ salutis, causa sanctæ Christi unitatis;* that Christ made St Peter *super ecclesiam suam*

<sup>1</sup> Spelman. *Concil.* [Tom. I.] A. D. 787, p. 293.

<sup>2</sup> [Hist. Novorum] p. 58, l. 43.

<sup>3</sup> [Corpus Juris Canonici, Decret. Part II.] Caus. ix.; quæst. i., capp. 4, 5, etc.: quæst. ii., capp. 2, 3, 4, etc. [Tom. I. : pp. 153, 156.]

<sup>4</sup> Ingulph. [Histor. inter Rerum Anglicarum Scriptores, p. 896, l. 32.]

<sup>5</sup> Vid. *Literas Paschalis II. Henrico I. apud Eadmer.* pp. 112—116.

<sup>6</sup> [Eodem anno (scil. 844) Angelbertus Mediolanensis Archiepiscopus ab ecclesia Romana, parum comperta de causa, descivit, tantumque exemplo in posterum valuit, ut non nisi post ducentos annos Ecclesia Mediolanensis ad

Romanæ obedientiam auctoritatemque redierit. Siginus, *Histor. de Regno Italiae*, Lib. v. p. 194. And the same author remembers, A. D. 1059, Pope Nicholas II. sending thither a legate: “Rumor in civitate a factione clericorum excitatus increbuit, Ambrosianamque Ecclesiam antiquis patrum institutis liberam nec Romanis legibus obnoxiam esse, neque Pontificem Romanum jus ullum in sua Ecclesia ordinanda atque constituenda habere:” from which yet the legate or legates by their wise deportments removed them. Lib. ix. p. 345.]

<sup>7</sup> Eadmer. [p. 40, l. 6, 33]: p. 38, l. 33.

*principem*, so as to be barred of appealing to him, as was required, was *Petrum abjurare, et qui beatum Petrum abjurat, Christum . . . . indubitanter abjurat*—speeches not met with formerly, and the English ear was so unacquainted with, as he] was told by the king, bishops, and lay lords, that<sup>8</sup> it was a thing unheard, and altogether against the use of the realm, for any of the great men, especially himself, to presume any such thing without the king's licence: who affirmed, <sup>9</sup>*nequaquam fidem quam sibi debebat simul et apostolice sedis obedientiam* 12 *contra suam voluntatem posse servare*. And the archbishop persisting in his journey thither, had not only his bishopric seized into the king's hand, but the pope being shewed how his carriage was resented here, did not afford him either <sup>10</sup>*consilium* or *auxilium*, but suffered him to live an exile all that prince's time<sup>11</sup> without any considerable support, or adjudging the cause in his favour. Which makes it the more strange that (having found by experience what he had heard before, that it was the king, not the pope, could help or hurt him) this visit being so little to his advantage, at his first presenting himself to Henry the first, he should oppose<sup>12</sup> that prince in doing him homage, and being invested by him,—a right continued unto that time from his ancestors, and by which himself had received<sup>13</sup> the archbishopric from his brother,—and this on a suggestion that it was prohibited in a council held at Rome: in which he went so far as to tell the king, <sup>14</sup>*quod nec pro redemptione capitis mei consentiam ei de iis quæ præsens audiri in Romano concilio prohiberi, nisi ab eadem sede interdictorum absolutionis sententia prodeat, a qua constitutionis ipsorum vinculum prodiit*.

6. This is the first, if not the only time, that to what was acted at Rome an obedience was required here, as not to be dispensed with but from thence; for it is undoubted, this kingdom never held itself tied by any thing passed there, till received here; as <sup>15</sup>the same author rightly observes, things done there, not ratified here, to be of no value. And when

<sup>16</sup>Winchelsea, 1296, would have introduced the contrary, it cost

<sup>8</sup> Ibid. p. 39, l. 30.

<sup>14</sup> Ibid. p. 70, l. 9, etc.

<sup>9</sup> Ibid. p. 26, l. 1.

<sup>15</sup> Ibid. p. 92, l. 40: vid. Spelman.

<sup>10</sup> Ibid. p. 52, l. 17.

Concil. [Tom. I.] p. 166, § 9.

<sup>11</sup> Nil judicii vel subventionis per Romanum præsulem nacti. Ibid. p. 53, l. 28.

<sup>16</sup> Hen. de Knyghton [de Eventibus Angliae] col. 2491, l. 19, etc. A.D. 1296: Vid. Matth. Westmonast. [Flores Historiarum, p. 429, l. 24, etc.] W. Thorn [Chronica, inter Scriptores x. col. 1965, § 2.]

<sup>12</sup> Ibid. p. 56, l. 6.

<sup>13</sup> Ibid. p. 18, l. 4: p. 20, l. 35.

him dear, the clergy forced to reject the command<sup>1</sup>, and [in fine] the court to quit her pretences. [How this was received here, we cannot better learn than from Anselm's letter to Paschalis II.; which, because it is not in his printed works, I will give out of a MS. copy of them in Sir John Cotton's library. *Postquam revocatus ad episcopatum redii in Angliam, ostendi decreta apostolica, quæ in Romano concilio præsens audiri; ne, scilicet, aliquis de manu regis aut aliqui laici ecclesiarum investituras acciperet, ut pro hoc ejus homo fieret, nec aliquis hæc transgredientem consecrare præsumeret. Quod audientes rex et principes ejus, ipsi etiam episcopi et alii minoris ordinis tam graviter acceperunt, ut assererent se nullo modo huic rei assensum præbituros, et me de regno potius quam hoc servarent expulsuros, et a Romana ecclesia se discessuros. Unde, reverende pater, vestrum petii per epistolam nostram consilium, quam misi celsitudini vestrae per Guillelmum regis legatum. Sed quoniam responsi vestri literas non accepi adhuc, per legatos nostros quos mitto cum carissimis fratribus et coepiscopis nostris, qui pro eadem re vestram sanctitatem adeunt, jam petitum iterum suppplex per chartam sublimitatis vestrae certum peto consilium<sup>2</sup>.]*]

7. But the dispute, however the right stood, grew so high, the king told Anselm<sup>3</sup> the pope had not to meddle with his rights, and from hence issued that bold letter we find in Jorval-  
13 lensis, col. 999, 37,&c., which I have likewise seen in an old hand recorded amongst divers other memorials of the archbishops of Canterbury; though I must needs say it seems to me by <sup>4</sup>Pascalis his answer, not sent by those he names, but by former messengers. [He told the king, *sanctæ Romanæ ecclesie illa in tuo regno pollicebaris, quæ tempore tui patris habuerat; eos requirens honores, quos antecessorum nostrorum tempore pater tuus habuerat*; which clearly hath reference to these words in the said letter,  *eos honores et eam obedientiam quam tempore patris mei antecessores vestri in regno Angliæ habuerant, tempore meo ut habeatis volo; eo videlicet tenore, ut dig-*

<sup>1</sup> Liber Sextus [Decretal. Bonifacii VIII.] Lib. III. Tit. xxiii. c. 3: Clement V. [Constitutiones], Lib. v. Tit. xvii. c. 1.

<sup>2</sup> Epist. cxcv. in Bibliotheca Cotton. Claudius, A. XI. : fol. 97, b.]

<sup>3</sup> Eadmer. p. 70, l. 5.

<sup>4</sup> Ibid. p. 59, l. 48.

<sup>5</sup> Vid. Jorvalens. col. 999, l. 47, &c.] [The reference is to the Chronicon of John Brompton, abbot of Jervall or Jorvalle. In Twysden's edition of the Scriptores x., where this Chronicon will be found, the name of the author is incorrectly printed *Jornalensis*.]

*nitates, usus et consuetudines, quas pater meus tempore antecessorum vestrorum in regno Angliae habuit, ego tempore vestro in eodem regno meo integre obtineam].* <sup>6</sup> In this controversy the pope's returns were so ambiguous, that he writ so differing from their relations were sent, it was thought fit Anselm should himself go to Rome; with whom king Henry sent another, <sup>7</sup> who spake plainly, his master *nec pro ammissione regni sui passurum se perdere investituras ecclesiarum*: and (though Rome were willing to comply in other particulars) told Anselm denying that, he <sup>8</sup> could not assure him of a welcome in England; who thereupon retired to Lyons. Where finding <sup>9</sup> slender comfort from Rome, he sought the king by letters, and after, by the means of Henry's <sup>10</sup> sister, made his peace; at which yet he was not permitted (such was his spirit) to enter England, denying to communicate with them had received bishoprics from the king, but by the pope's dispensation. The conclusion was, Paschalis taught by experience, neither the court of Rome nor the archbishop gained aught by this contest, however he would not at first abate <sup>11</sup> *prædecessoris sui sententiae rigorem*, yet now admitted great limitations to what Urban had established. So as the king <sup>12</sup> assenting none for the future should be invested *per laicam manum* (which was no more, but what he formerly did himself, he would now cause to be performed by a bishop) the other agreed no prelates to be barred of promotion, *etiamsi hominia regi fecerint*; <sup>13</sup>...*donec per omnipotentis Domini gratiam ad hoc omittendum cor regium* [*tuae prædicationis imbris*] *molliatur*: which yet the king soon after, on the pope's permission of them <sup>14</sup> to the Dutch, did threaten <sup>15</sup> *sine dubio se resumpturum suas investituras, quoniam ille suas tenet in pace*. But for aught I find, it went no farther than their swearing fealty to the king, which seems to have been long <sup>16</sup>continued.

<sup>6</sup> Apud Eadmer. p. 56, l. 22.

<sup>7</sup> Ibid. p. 73, l. 13.

<sup>8</sup> Ibid. p. 75, l. 27.

<sup>9</sup> Ibid. p. 79, l. 24.

<sup>10</sup> Ibid. p. 80, l. 17.

<sup>11</sup> Ibid. p. 63, l. 3.

<sup>12</sup> Ibid. p. 91, l. 32.

<sup>13</sup> Ibid. p. 87, l. 35.

<sup>14</sup> [Vid. Florent. Wigorniens. Chronicon, ad calc. Flor. Historiar. A.D. 1111. p. 654. et Siegbert. Gemblacens. Chronicon. p. 614.]

<sup>15</sup> Eadmer. p. 100, l. 1.

<sup>16</sup> Gervas. Dorobern. A.D. 1187, col. 1503, l. 35: R. de Glanville. Abbatii de Bello salutem. *Præcipio tibi, ex parte domini regis, per fidem quam ei debes, et per sacramentum quod ei fecisti, etc.*

W. Thorn, A.D. 1220, col. 1873, l. 56: Hugo III, abbas S. Augustini, grata-  
ter admissus, juravit fidelitatem domino  
regi, super crucem ipsius legati.

14 8. The papacy, finding by this contest the difficulty of carrying any thing here by a high hand, thought of more moderate ways for bringing the clergy of this nation wholly to depend on Rome; but that could not be, without diminishing the power the archbishop held over them, and therefore must be won by degrees. To advance which, nothing could more conduce, than to have a person of wisdom reside here, who might direct this church according to the papal interest. But this was thought fit to be given out before practised, and likely to be doubly opposed; for the archbishop well understood the admitting a legate for that end to be <sup>1</sup> *in sua dignitatis præjudicium*. And the king suffered none to be taken for pope, but whom he approved, nor any to receive so much as a letter from Rome, without acquainting him with it, and held it an undoubted right of the crown, <sup>2</sup> *ut neminem aliquando legati officio in Anglia fungi permitteret, si non ipse, aliqua præcipua querela exigente, et que ab archiepiscopo Cantuariorum certisque episcopis regni terminari non posset, hoc fieri a papa postularet.*

9. Things standing thus, in the year 1100 the archbishop of Vienna, coming into England, <sup>3</sup> reported himself to have the legatine power of all Britain committed unto him; which was with so much admiration of the nation (as a thing had not been heard of before) that, if he had any, at least he thought not fit to make use of his commission, but departed *a nemine pro legato suscepimus, nec in aliquo legati officio functus.*

10. Fourteen years after, <sup>4</sup> Paschalis II., by letters of the thirtieth of March and first of April, expostulates with the king about several particulars; of which one is, his admitting neither messenger nor letter to be received, but by his leave. But see the words: *Sedis apostolicae nuncii vel literæ præter jussum regie majestatis nullam in potestate tua suspicionem aut aditum promerentur; nullus inde clamor, nullum inde iudicium ad sedem apostolicam destinantur, &c.*, and the year following addressed <sup>5</sup> Anselm, (nephew to the late archbishop, and after abbot of St Edmundsbury) hither, shewing by letters he had committed unto his administration *vices apostolicas in An-*

<sup>1</sup> Mat. Paris, [Hist. Major] A.D. 1237, p. 440, l. 17.

<sup>2</sup> Eadmer. p. 125, l. 53, etc.: p. 6, l. 25: p. 113, l. 1.

<sup>3</sup> Ibid. p. 58, ll. 40—46.

<sup>4</sup> Ibid. pp. 112—116. [A.D. 1115.]

<sup>5</sup> Ibid. p. 118, l. 23. [A. D. 1116.]

glia. This made known here (though the bearer were not permitted to enter the kingdom) the clergy and nobility gathered in council at London, concluded the archbishop should go to the king in Normandy, make known unto him the ancient custom of the realm, and by his advice to Rome, (as being the person was most interested in it) *ut hæc nova annihilaret*; from whence he obtained the letter, or rather declaration to the king and clergy the same author <sup>6</sup>hath recorded. So by this care the matter was again stopped.

11. The king, 1119, <sup>7</sup>sent his bishops to a council held by Calixtus II., at Rheims, at their departing gave them these instructions: not to complain of each other, because himself would right them at home; that he paid that rent his predecessors had done, and enjoyed likewise those privileges had been formerly permitted them; that they should salute the pope from him, hear his precepts, but bring no superfluities into his kingdom. But see the words: *Reo Anglorum prælatis regni sui ad synodum [quidem] ire permisit; sed omnino, ne alicujus modi querimoniam alterutrum facerent, prohibuit. Dixit [enim], Omni plenariam rectitudinem conquerenti faciam in terra mea: redditus ab anterioribus constitutos Romanæ ecclesiae singulis annis erogo, et privilegia nihilominus ab antiquis temporibus pari modo mihi concessa teneo. Ite, dominum papam de parte mea salute, et apostolica tantum præcepta humiliter audite, sed superfluas adinventiones regno meo inferre nolite.* Certainly this prince did hold, the pope with the advice of a council might labour to introduce superfluous inventions, which the English were not tied to receive, the disputes of his bishops be by <sup>16</sup> him ended at home without carrying their complaints beyond seas, according to the assize <sup>8</sup>of Clarendon; the king in nothing obliged to Rome, but in the payment of Peter-pence, as his father had before <sup>9</sup>expressed himself.

12. In November following, the pope and king had <sup>10</sup> meeting at Gisors in Normandy, where Calixtus confirmed unto him the usages his father had practised in England and Normandy, and in especial that of sending no legate hither, but on

<sup>6</sup> Ibid. p. 120.

<sup>7</sup> Orderic. Vitalis [Eccles. Histor. Lib. xii.] p. 857, D: p. 858, a [inter Hist. Norman. Scriptor. Antiq.]

<sup>8</sup> Cap. viii. [apud Gervas. Dorobern.

col. 1387.]

<sup>9</sup> Baron. [Annal. Eccl.] Tom. XI. ad an. 1079, xxv.: Lanfranc. Ep. vii. [Opp. p. 304.]

<sup>10</sup> Eadmer. p. 125, l. 49.

the prince's desire. Yet notwithstanding, the same <sup>1</sup>pope not fully two years after addressed another to these parts: but he by the king's wisdom was diverted, [his majesty assuring him, his legatry could not have any stable authority, but by the connivance of the three estates (which we now call the parliament); and further, that he should not willingly part with *patrias consuetudines sibi ab apostolica sede concessas... in quibus haec, et de maximis una erat, quae regnum Angliae liberum ab omni legati ditione constituerat, insomuch] ut qui legati officio fungi in tota Britannia venerat, immunis ab omni officio tali, via qua venerat, extra Angliam a rege missus est.*

13. But here, by the way, the reader may take notice, these words, <sup>2</sup>*collata*, <sup>3</sup>*impetrata, concessa, permissa*, used by our best authors in speaking of the rights of the crown in points of this nature, do not import as if it had only a delegatory power from the pope by some grant of his, as is fancied by those <sup>4</sup>would have it so; for we read of no such concessions from him, unless that of Nicholas II., of which in the next: but that they were continually exercised, the pope seeing, and either approving, or at least making no such shew of his disliking them, as barred their practice; which by comparing the said authors is plain. Eadmerus speaks as if these customs were <sup>5</sup>*concessa, fungi permissa*, from Rome; which he calls <sup>6</sup>*antiqua Angliae consuetudo, libertas regni, &c.* [Hen. I., as we have seen, called them his paternal customs *concessas* by the see apostolic, that were indeed no other than the laws of the land, which could not be changed but by act of parliament]. So [again] he terms them <sup>7</sup>*privilegia patri et fratri suo, sibique a Romana ecclesia jam olim collata*; about which yet it is manifest, even <sup>8</sup>by him, the court of Rome was ever in contest with our kings, who maintained them as their royalties against it, and challenged by

17 Henry I. by no other title than <sup>9</sup>*dignitates, usus, et consuetudines, quas pater ejus in regno habuit, &c.*, which the pope

<sup>1</sup> Eadmer. p. 137, l. 46: p. 138, l. 13, etc. [A. D. 1121.]

<sup>2</sup> Ibid. p. 116, l. 28.

<sup>3</sup> Ibid. p. 125, l. 51.

<sup>4</sup> Answere to the Reportes of Syr Edw. Cooke, by a Catholike Devine [viz. Father Robert Persons] cap. ix. § 8, p. 290.

<sup>5</sup> Eadmer. p. 125, ll. 53, 54.

<sup>6</sup> Ibid. p. 110, l. 33, etc.

<sup>7</sup> Ibid. p. 116, l. 22.

<sup>8</sup> Ibid. p. 6, l. 15, etc. Lib. II. per totum: p. 113, l. 1, etc.: p. 115.

<sup>9</sup> Hen. I. Epist. apud [Johan. Bromton] Jorvalens. col. 999, l. 49, etc.

<sup>10</sup> calls *honores quos antecessorum nostrorum tempore pater tuus habuerat*, and affirms to be *grata in superficie, ... interius requisita et legati [tui] vocibus exposita, gravia et vehementissima paruerunt*. So far have popes been from conferring the least unto them <sup>11</sup>.

14. It is true, things done by princes as of their own right, popes finding not means to stop, would in former ages as later, by privilege <sup>12</sup> continue unto them. *Nicholaus papa hoc domino meo [regi] privilegium, quod ex paterno jure suscepereat, præbuit*, <sup>13</sup> said the emperor's advocate. And the same pope, finding our kings to express one part of their office to be <sup>14</sup> *regere populum domini, et ecclesiam ejus*, wrote to Edward the Confessor: <sup>15</sup> *Vobis [vero] et posteris vestris regibus committimus advocationem [et tuitionem] ejusdem loci, et omnium totius Angliae ecclesiarum, ut, vice nostra, cum concilio episcoporum et abbatum constituas ubique quæ justa sunt*. As a few years since, <sup>16</sup> the republic of Venice, not assenting to send their patriarch to an examination at Rome, according to a decree of Clement VIII., Paulus Quintus [after an <sup>17</sup> absolute denial of granting any liberty in that kind, finding he would not be sent, in fine] declared that *impostorum Venetiarum antistites Clementis decreto excimerentur*: so that now that state doth, by an exemption, what they did before as sovereign princes. Besides, kings did many times as grants ask those things of the pope, they well understood themselves to have power of doing without him. [Innocentius IV. A.D. 1247, granted Henry III. <sup>18</sup> *quod quando papa providet alicui vel aliquibus ex nepotibus suis vel cardinalium, ipse vel ipsi cardinales rogabunt dominum regem, cum instantia magna, quod placeat domino regi ut prævideatur sic*: which yet, the laws remaining made in the times of Edw. III., Rich. II., Hen. IV. and other princes, enough teach us might have been here regulated without him]. <sup>19</sup> Henry V. demanded of Martin V. five particulars; to which his ambassadors

<sup>10</sup> Eadmer. p. 59, l. 50, etc.

<sup>11</sup> Vid. cap. iv. § 19.

<sup>12</sup> Vid. cap. v. § 4. [cap. ix. § 4.]

<sup>13</sup> Baron. Tom. XI. ad an. 1069. xxiii.

<sup>14</sup> [Leges Edward. Confess. c. xvii.]  
[in "Ancient Laws and Institutes of England," Vol. I. p. 449.]

<sup>15</sup> [Apud Ailredum, de vita Edw. Confessor. col. 388, l. 53.]

<sup>16</sup> Andr. Mauroceni Hist. Venet. A.D. 1601, p. 629, b: A.D. 1608, p. 687, b [ed. Venet. 1623.] Lettres du Cardinal D'Osset, [CCLXXXIII. p. 669; à Paris, 1627.]

<sup>17</sup> [Maurocen. ubi supra: p. 651, b.]

<sup>18</sup> [Mat. Paris, p. 722, l. 8.]

<sup>19</sup> Narrantur hec in Vita Hen. Chichele ab Arthuro Duck, [p. 25; inter Vit. Select. Virorum, Lond. 1681.]

finding him not so ready to assent, told him *se in mandatis habere, ut coram eo profiteantur, regem in iis singulis jure suo usurum, utpote quae non necessitatis, sed honoris causa petat, et ut publicam de ea re coram universo cardinalium cætu protestationem interponant.* And to the same purpose there are sundry examples yet remaining on record, where <sup>1</sup>the king on the petition of the commons for redress of some things (of ecclesiastic cognizance) amiss, first chooses to write to the pope; but on his delay, or failing to give satisfaction, doth either himself by statute redress the inconvenience, or command the archbishop to see it done<sup>2</sup>.

18 15. But here, before I proceed any farther, because it cannot be denied, in former times there was often intercourse between the church of England and Rome, and such as were sent from thence hither are by some styled *nuncii*, by others *legati*; I think it not amiss to consider, what the cause was one side so much opposed the sending a legate, and the other so laboured to gain it.

16. After the erection of Canterbury into an archbishopric, the bishops of that see were held *quasi alterius orbis papæ*, as Urban II. <sup>3</sup>styled them, did only exercise <sup>4</sup>*vices apostolicas in Anglia*, that is, used the same power within this island the pope did in other parts; the one <sup>5</sup>claiming, because Europe had been converted by disciples sent from Rome; the other, that he had sent <sup>6</sup>preachers through England. And is therefore called frequently in our writers <sup>7</sup>*princeps episcoporum Angliae*, <sup>8</sup>*pontifex summus*, <sup>9</sup>*patriarcha*, <sup>10</sup>*primas*, and his seat <sup>11</sup>*cathedra patriarchatus Anglorum*; and this not in civility only, but they were as well <sup>12</sup>*sic habiti as nominati*. It is true, the correspondence between it and the Roman was so great, they were

<sup>1</sup> Rotul. Parl. 17<sup>o</sup> Edw. III. § 59, sub fin.: 25<sup>o</sup> Edw. III., en les octaves de la Purification, § 13: 7<sup>o</sup> & 8<sup>o</sup> Hen. IV. § 114: 3<sup>o</sup> Hen. VI. § 38.

<sup>2</sup> Vid. cap. v. § 20 [cap. iv. §§ 17, 18, 19.]

<sup>3</sup> W. Malmesbur. [de Gestis Pontif.] Lib. i. in Anselm. [p. 223, l. 33]: Gervas. Dorobern. [Imaginationes de Discord.] col. 1327, l. 58.

<sup>4</sup> Eadmer. p. 58, l. 43.

<sup>5</sup> Ibid. p. 115, l. 17.

<sup>6</sup> R. de Diceo [Abbrev. Chron.], col.

437, l. 64.

<sup>7</sup> Eadmer. p. 27, l. 34: mihi (videl. Anselmo) principi vestro.

<sup>8</sup> Ibid. p. 107, l. 33: p. 113, l. 47.

<sup>9</sup> Gervas. Dorobern. [Actus Pontif. Cantuar.] col. 1663, l. 56. [Malmesbur. Prolog. Libr. i. de Gestis Pontif. p. 195.]

<sup>10</sup> Eadmer. p. 30, l. 9.

<sup>11</sup> Ibid. p. 113, l. 47: Continuatio ad Florent. Wigorn. A.D. 1136 [p. 666, ed. Francofurt. 1601.]

<sup>12</sup> Gervas. Dorobern. ubi supra.

rather held one than two churches; yet, if any question did arise, the determination was in a council or convocation here; as <sup>13</sup>the deposing Stygand, <sup>14</sup>the settling the precedence between Canterbury and York, <sup>15</sup>the instructions I mentioned of Hen. I. to his bishops, <sup>16</sup>the right of the kingdom that none should be drawn out of it *auctoritate apostolica*, do enough assure us. If recourse were had to Rome, it was only <sup>17</sup>*ut majori concilio decidatur quod [hactenus] terminari non potuit*, as to the more learned divines, to the elder church, of greatest note in Europe, by whom these were converted, and therefore more reverenced 19 by this, as that was most solicitous of their well-doing, and most respected for their wisdom. All which is [farther] manifest by that humble letter <sup>18</sup>Kenulphus and others of Mercia wrote about 797 to Leo III.; wherein it plainly appears, he seeks to that see for direction, because the conversion of the nation first came from thence, and there resided in it men of sound learning, whom he doth therefore desire as *quibus a Deo merito sapientiae clavis collata est, ut super hac causa* (which was the placing an archiepiscopal chair at Lichfield,) *cum sapientibus vestris queratis, et quicquid vobis videatur, nobis postea [servandum] rescribere dignemini*. By which it is clear his inquisition was as unto persons of profound literature, (had the key of knowledge conferred on them) not as to those had authority over this church. [And, therefore, John VII. says it should be *gratum* to him, if the case of Wilfred could be here determined; if not, recourse might be had to Rome, <sup>19</sup>*ut majori concilio decidatur, quod hactenus terminari non potuit.*]

17. As for acts of ecclesiastic authority, what proceeded not from the king, did from the archbishop, who was not at all commanded by any, <sup>20</sup>*nec ullius unquam legati ditioni addictus*, but preceded them all. <sup>21</sup>None did wear a mitre within his

<sup>13</sup> Florent. Wigorn. [Chronicon] A.D. 1070 [pp. 636, 637].

<sup>14</sup> Vid. §§ 18, 20, 60.

<sup>15</sup> Supra, § 11.

<sup>16</sup> Vid. Mat. Paris, [Hist. Major] A.D. 1246, p. 699, l. 10: et postea, § 38, in text. et in marg.

<sup>17</sup> W. Malmesbur. [de Gestis Pontif.] Lib. III. [p. 267, l. 58.] Vid. § 8.]

<sup>18</sup> W. Malmesbur. de Gestis Regum, Lib. I. [p. 31, l. 10, etc.]

<sup>19</sup> [Malmesbur. de Gestis Pontif. Lib. III.] [p. 267, l. 58.]

<sup>20</sup> Gervas. Dorobern. [Actus Pont. Cant.] col. 1663, l. 56.

<sup>21</sup> Ibid. A.D. 1186, col. 1485, l. 63: Non est ante hæc tempora archiepiscopo Cantuariensi talis illata injuria, ut in provincia ejusdem archiepiscopi, imo et in ecclesia, ut de cruce sileam, legatus aliquis mitratus incederet.

province, or had the crosier carried, nor laid any excommunication; and when he did, the <sup>1</sup>clergy of the place did teach, both from the king and archbishop, not to value it, on this ground, that *in diœcesi archiepiscopi apostolicam non tenere sententiam.* [The admitters of it were, by the king's command, imprisoned. The archbishop (conscious of his own rights) <sup>2</sup>advising not to fear it, *nec aliquatenus a divinis cessarent*, shewed himself no obedience to any precept came thence; <sup>3</sup>excused others by taking all as his act; communicated with them, Rome had interdicted, *in cibo et potu longoque colloquio*; yet <sup>4</sup>not admitting the pope's *absolution* for valid of those himself had excommunicated. And another having in a visitation given such distaste to the house of St Augustine, as they were forced to ask from Innocentius IV. letters in their favour; they <sup>5</sup>being given him, he so little esteemed them, as scarce read he made a present of them to the fire; not at all revoking any sentence by him formerly laid, <sup>6</sup>*sed easdem ratus et firmas esse promulgavit.* But where some may think, by the chronicler of the abbey, as if the abbot by second letters obtained his indemnity, I conceive him mistaken; for those which he gives for the second (which you may likewise see in Matthew Paris his <sup>7</sup>*Additamenta*, who then writ, about a hundred and thirty years before Thorn) bear date eight days before the other; and therefore could not be revocatory of what themselves preceded: as Thorn himself mentions not any effect they wrought. So that we may fully conclude, these prelates did no other than what the known rights of their see did lead them unto; following the examples of their predecessors, and amongst others of <sup>8</sup>St Dunstan, who stands as well in the calendar of saints and register of archbishops of Canterbury.]

18. As for councils, it is certain none from Rome did, till 1125, [intermeddle in calling] any here: if they did come to them, as to Calcuith, the king, upon the advice of the archbishop, <sup>9</sup>*statuit diem concilii.* So when William the first held one at Winchester, 1070, for deposing Stygand, though there

<sup>1</sup> Gervas. Dorob. A. D. 1187, col. 153.,  
1. 37, etc.

<sup>2</sup> [Ibid. col. 1529, l. 63.]

<sup>3</sup> [Ibid. col. 1532, l. 46.]

<sup>4</sup> [Ibid. col. 1546, l. 30. Vid. infra,

§§ 73, 74.]

<sup>5</sup> [Mat. Paris, A. D. 1253, p. 879, l.

15.] <sup>6</sup> [W. Thorn, col. 1901, l. 17.]

<sup>7</sup> [Ad calc. Hist. Major, p. 189.]

<sup>8</sup> [Vid. Capgrav. Nova Legenda, in Vita Dunstan. fol. 98, b, col. 2.]

<sup>9</sup> Spelman. Concil. [Tom. I.] p. 293.

came to it three sent from Alexander II., yet it was held, <sup>10</sup> *in bente et presente rege*, who was <sup>11</sup> president of it. The difference touching precedence between the sees of Canterbury and York <sup>20</sup> having been before the same pope, and by him sent back for a determination at home, it is observable, that, in a council said therefore to be called, *ex precepto Alexandri papæ annuente rege*, the pope's legate subscribed the sixteenth, after all the English bishops: as is truly <sup>12</sup> recorded in the *Antiquitates Britannicae Ecclesiae*, agreeing with a very ancient MS. copy I have seen of the said council; as Diceto and others do <sup>13</sup> rank him after the king, Canterbury, and York. If any shall ask whether I have met no copies in which he was placed otherwise, I must confess I have seen some books wherein he was above the English bishops, next after the queen; but they were only late transcripts, not of any antiquity; as in a <sup>14</sup> book of Cróyland writ since the beginning of Henry VII.

19. The pope, for many years now past, for being a spiritual pastor, and patriarch of the west, hath been treated with more reverence than any bishop, and for being a potent temporal prince, with more observance than merely a ghostly father. A <sup>15</sup> grave writer notes, Henry I. having gone through the troubles were on him with his brother, and likewise Anselm, *subjugatis omnibus inimicis securus erat, . . . nec aliquem ut primus formidabat, præter papam; et hoc non propter spiritualem, sed temporalem [auctoritatem et] potestatem*. Which, as it is recorded of that prince, so no question is true of many others.

20. By which we may see, when Rome did in former times *apostolica authoritate præcipere*, it was to bishops (whom he styled his brothers,) no other than such fraternal commands,

<sup>10</sup> Florent. Wigorn. [Chronicon] A.D. 1070, p. 636.

<sup>11</sup> Vita Lanfranc. c. vi. p. 7, [prefixed to the Paris edition of his works.]

<sup>12</sup> Note, you must see these subscriptions in the London edition, 1872, [p. 95], for in that of Hanau, 1605, [p. 111], they are for the most part (I know not on what warrant) omitted.

<sup>13</sup> R. de Diceto [Abbreviat. Chron.], col. 485, l. 24.

<sup>14</sup> In Biblioth. Cotton. fol. lxxiv.

[The only MS. now surviving in the Cotton Library, which at all answers to this description, is Vita Abbatum Craylandiæ, Vespasian, B, xi. 76. It is also printed in Gough's Antiquities of Crayland, Append. No. lxxvi. There seems, however, no passage in this Chronicle like that referred to in the text.]

<sup>15</sup> Mat. Paris, Hist. Minor, ad an. 1107. [A MS. in C. C. C. library, Cambridge, numbered lvi.]

the elder may and doth ordinarily lay upon the younger brother, of whom he is solicitous; such as St Paul's were <sup>1</sup>to the Thessalonians, <sup>2</sup>Philemon, &c. No other than of late Calvin's were to Knox, who being chosen by certain of Frankfort to be preacher unto them, <sup>3</sup>their "vocation he obeyed, albeit unwillingly, at the commandment of that notable servant of God, John Calvin." And a little after, the lords of Scotland sending for him home, <sup>4</sup>did accompany their letters to him with others to Mr Calvin, craving of him, that by his authority he would command the said John once again to visit them. And truly whosoever will, without partiality, seriously consider the whole contexture of our laws and histories, weighing one circumstance with another, must conclude the pope's commanding to have been *volentibus*, not *nolentibus*, (as <sup>5</sup>St Hierom says those of a bishop ought to be) for if disliked, his precepts were <sup>6</sup>questioned, <sup>7</sup>opposed, <sup>8</sup>those he sent not permitted to meddle with that they came for, their prohibitions that others should not, neglected. The English having ever esteemed the church of Canterbury in spirituials, that is, *quæ sunt ordinis*, without any intervening superior, <sup>9</sup>*omnium nostrum mater communis sub sponsi sui Iesu Christi dispositione*; in other things, as points of government, the ordering that, of right and custom, ever to have belonged to the king, assisted <sup>10</sup>with his council of bishops, and others of the clergy; who was therefore called *Vicarius Christi*, &c., as I shall shew hereafter more at large. The church of England holding that of St Augustine <sup>11</sup>an undoubted truth: *In hoc reges, sicut eis divinitus præcipitur, Deo servirunt in quantum reges sunt, si in suo regno bona jubeant, mala prohibeant, non solum quæ pertinent ad humanam societatem, verum etiam quæ ad*

<sup>1</sup> 2 Thess. iii. 12.

<sup>2</sup> Philem. 8.

<sup>3</sup> Knox, Hist. Church of Scotland, p. 93, [ed. 1644.]

<sup>4</sup> Ibid. p. 110.

<sup>5</sup> Ad Heliodorum Epitaph. Nepotiani, Torn. I. [p. 26, 2.]

<sup>6</sup> Eadmer. p. 92, l. 40: p. 125, l. 29.

<sup>7</sup> Gervaa. Dorobern. [Imaginationes de Discord.] col. 1315, l. 66, etc. : col. 1316, l. 8, etc. : col. 1318, l. 39: [Chronica] col. 1359, l. 41, etc. : W. Thorn. [Chronica] col. 1802, l. 26: col. 1848, l. 28: and these may serve in lieu of many

others, [which] may be alleged.

<sup>8</sup> Gervas. Dorobern. col. 1558, l. 56.

<sup>9</sup> Ibid. col. 1663, l. 24: col. 1615, l. 62.

<sup>10</sup> "Si episcopi tramitem justitiae in aliquo transgredierentur, non eas regis, (viz. alone) sed canonum judicium; sine publico et ecclesiastico concilio illos nulla possessione privari debuise; regem id non rectitudinis zelo, sed commodi sui compendio fecisse." Malmesbur. [Hist. Novell. Lib. II. p. 182, l. 6, etc.] reports this saying of a legate. Vid. § 24, infra.

<sup>11</sup> *Contra Crescon. Grammatic. Lib. LII. c. 61*: Torn. VII. [p. 185.]

*divinam religionem*: and accordingly our kings, so far as any laws or records of their actions are extant, from Ethelbert by the Saxons to the conquest, and from the Normans to these later times, have upon occasion exercised a power, shewing such titles were not in vain conferred on them. Neither did any decision, though never so punctually had in Rome, unless the parties agreed, stint the strife, till the king [and English church] concurred with it; as the frequent determinations on the behalf of Canterbury in point of superiority above York, found in <sup>12</sup>Malmsbury and others, may teach us; which yet never received a final end, till Edward III., under the great seal, set a <sup>13</sup>period to that long controversy. [See n. 74, 75.]

21. But after the pope began to think (or rather to say) himself had only <sup>14</sup>*plenitudo ecclesiastice potestatis*; <sup>15</sup>that no council could give laws to him, but all receive strength from him; and the canonists' flattery extended to declare him <sup>16</sup>*supra jura, et in eo sufficit pro ratione voluntas*;—his missives ran in a higher tone than formerly, and his commands, which were at first after <sup>17</sup>the example of St Paul, exhortations, entreaties, and the like, to carry <sup>18</sup>*apostolica auctoritate comprimere*; and to the archbishop demurring in the execution of them, <sup>19</sup>*tuum candelabrum concutiemus, et tantam præsumptionem cum gravibus usuris, [auctore Domino] exigemus*; and <sup>20</sup>*si . . . mandatum nostrum [infra statutum terminum] neglexeris vel distuleris adimplere, quia justum est ut ei obedientia subtrahatur qui sedi apostolice neglexerit obedire, venerabilibus fratribus [nostris] suffraganeis tuis, per scripta nostra, mandarimus, ut tibi reverentiam [et obedientiam] non impendant. Quod si [forte ab eis vel eorum aliquo contra prohibitionem nostram] tibi feceris [aliquam obedientiam et reverentiam] exhiberi, scias te tunc ab episcopali dignitate suspensum, &c.*—phrases and manners of writing denoting much more of

<sup>12</sup> W. Malmesbur. de Gestis Pontif. Lib. I. [p. 206, et seqq.]

<sup>13</sup> Antiquitat. Britan. p. 244, l. 54, in Simone Islippe [ed. Hanov. 1605.]

<sup>14</sup> De Auctoritate et Usu Pallii, e. 4. [Corpus Juris Canon. Tom. II. p. 29.]

<sup>15</sup> De Electione, etc. c. 4. [Ibid. p. 14.]

<sup>16</sup> Lyndewode, [Provinciale, Lib. I.] de temporibus Ordinstionum [p. 28, note q.]

<sup>17</sup> Philip. iv. 3: [Vid. Sergii Epist. Episc. Britannie, circa an. 693, de receptione Britwaldi in Archiepiscop. Cantuar. apud Malmesbur.] [de Gestis Pontif. Lib. I. p. 209.]

<sup>18</sup> W. Thorn, [Chronica] col. 1801, l. 53.

<sup>19</sup> Ibid. col. 1814, l. 34.

<sup>20</sup> Gervas. Dorobern. [Chronica] A. D. 1198, col. 1602, l. 64, etc.

authority than was used by popes in elder times. By which is manifest, the point in difference between the archbishop and the pope to have been not the sending a legate hither, but of one with a power above him, to command the English clergy, that is, to remove their dependency from him to Rome, as a superior over him.

22. To his gaining which, these usages of the archbishops were great stops; drawing so near an equality, and so pregnant 23 testimonies of his no-divine right to meddle here, not easy to be removed, unless some from the pope were admitted into the kingdom, that might at least give an essay to the guiding the English church after the papal interest: but that, how earnestly soever pressed, came to no effect, till 1125, Johannes Cremensis, a person well understanding (as <sup>1</sup>appears by his carriage six years before at Rheims) the designs of Rome, <sup>2</sup>came to the king in Normandy; where, after a long stay, his journey hither was permitted, with what qualifications I find not, [other than that it seems the archbishop did not admit the clergy meet on his summons; for the writ, convocating the prelates to council, went in his name, viz. <sup>3</sup>that the legate *ordinatione nostraque coniunctiva concilium celebrare dispositus Lundoniae . . . Propterea præcipimus, ut in eodem loco nobis occurras, etc.*] But coming with letters to Canterbury at Easter, [he] performed the office of the day in a more eminent chair as an archbishop, for so I English *loco summi pontificis*, according to the <sup>4</sup>phrase of those times; and, though a cardinal priest, used *insigniis pontificalibus* “the habit of a bishop;” which, being <sup>5</sup>an unusual novelty, passed not without scandal. But in the council which he held and presided in at London, the kingdom took more offence. I shall deliver it in my author’s own words; <sup>6</sup>*Totam Angliam in non modicam commovit indignationem: videres enim rem eatenus regno Anglorum inauditam, clericum scilicet presbyterii tantum gradu perfunctum, archiepiscopis, episcopis, abbatibus, totiusque regni nobilibus qui confluxerant, in sublimi solio præsidere; illos autem deorsum sedentes, ad nutum ejus vultu et auribus ani-*

<sup>1</sup> Orderic. Vitalis, [Eccl. Hist. Lib. xii.] p. 862.

<sup>2</sup> Simeon. Dunelmens. [Histor. de Gestis Regum Angliæ, inter Scriptores x.] A.D. 1125, col. 251, l. 61.

<sup>3</sup> [Spelman. Concil. Tom. II. p. 33.]

<sup>4</sup> Eadmer. p. 107, l. 33: p. 113, l. 47: Gervas. Dorobern. col. 1663, ll. 42—49.

<sup>5</sup> “Inusitata [negotii] novitas.” Ibid. l. 48.

<sup>6</sup> Ibid. ll. 34—42.

*mum suspensum habere.* From whence we may conclude it a thing before not heard of, for any legate, though a cardinal, to precede bishops, (the first council, in which they preceded archbishops, I take to have been the council of Vienne, 1311; where the archbishop of York is noted to have been placed *primus et præcipuus post cardinales, et post Trevirensen archiepiscopum*;) or be seated in a more eminent place over them; (I have shewn they did not subscribe in English councils above them;) that these mutations were scandalous to the nation. [Yet here it stayed not; for, in after ages, he became so omnipotent, as the archbishop having summoned a convocation or synod at St Paul's, cardinal Wolsey, by his authority legatine, removed it to Westminster; whence arose <sup>9</sup>the proverb, that 'St Peter had shaven St Paul's beard.']}

23. As this is the first ecclesiastic synod managed by any 24 legate from Rome; so before his credential <sup>10</sup>letters from Honorius II., as well to the lay as clergy, I have not met with the text, <sup>11</sup>*Pasce oves meas*, used to prove the pope general pastor [or governor] of all the world: it is true, Paschalis II., <sup>12</sup>ten years before, uses it to shew his authority over <sup>13</sup>bishops; but neither doth <sup>14</sup>Anselm, 1095, produce it, neither doth this cardinal at <sup>15</sup>Rheims, 1119, mention it; though either of them did allege as many places of scripture as were then common for the extent of his power; and Petrus Blesensis, that lived a little after, <sup>16</sup>interprets it as spoken to all bishops, and to import no other than *evangelizare*: [and to be but *Pasce eucharistia, pasce doctrina, pasce bona vita*; and again, *Pasce doctrina, pasce vita, pasce morte*; nothing of *rege imperio*,] a certain sign, if that exposition were hatched before, it was not common; which, afterward approved by <sup>17</sup>St Bernard, and inserted into <sup>18</sup>the

<sup>7</sup> Thom. Stubbs, [Actus Pontif. Eboracens. inter Scriptores x.] col. 1730, l. 30.

<sup>8</sup> Supra, § 18.

<sup>9</sup> [Hall's Chronicle, 15<sup>o</sup> Hen. VIII.] [fol. 110, b.]

<sup>10</sup> Apud Simeon. Dunelm. col. 252, l. 22.

<sup>11</sup> John xxi. 15, 16, 17.

<sup>12</sup> Apud Eadmer. p. 115, l. 9: A.D. 1115.

<sup>13</sup> "Ecclesiarum præpositi," [Ibid.]

<sup>14</sup> Eadmer. p. 27, l. 37, etc.

<sup>15</sup> Orderic. Vitalis, [Eccl. Hist. Lili.

xii.] p. 862.

<sup>16</sup> Pet. Blesensis Epist. cxlviii. [Opp. p. 233.] [Serm. xliv. xlvi.] [See the Mentz edition of 1600, by Buseus, for the references to the Sermons; pp. 454, 460. The Paris edition of 1667 contains a collection of Sermons entirely different.]

<sup>17</sup> De Consideratione ad Eugenium, Lib. 11. c. 8. [Opp. col. 871.]

<sup>18</sup> Extravagant. Decretal. Commun. [Lib. 1.] de Majoritate et Obedientia, c. 1. [ed. Taurini, 1620.]

canon law by Boniface VIII., about the year 1300, is now stood upon as the basis of papal greatness. But to return to that we were on.

24. The archbishop, sensible of these indignities, proceeds not as his predecessor, by joint council of the bishops, abbots, and nobility, but hath himself recourse to Rome (who already knew <sup>1</sup>se converttere ad oratorum verutias, . . . dummodo consulat suis profectibus) where the pope, which was Honorius II., committed unto him <sup>2</sup>vice suas in *Anglia et Scotia, et apostolicae sedis legatum constituit*. So that he, who before was <sup>3</sup>primas *Angliae, Scotiae, et Hiberniae, necne adjacentium insularum*, that none else <sup>4</sup>gerebat vices apostolicas in *Britannia*, and this of his own right, without any delegatory power, might now doing the same be said to do it by a power derived from Rome. An invention highly advantageous to the papacy: for before the king and archbishop, or rather the archbishop by the king's will and appointment, had ever taken cognizance of all matters of episcopacy, as the erection of bishoprics, disposing and translating bishops, &c.; so Paschalis II. expostulates with Henry I., <sup>5</sup>that *praeter auctoritatem nostram episcoporum translationes praesumitis*; and the <sup>6</sup>deposing of them to have been in a synod, <sup>7</sup>historians of all times before assure us, even unto Lanfranc, who <sup>8</sup>attempted it upon small grounds against Wulstan. As for dividing bishoprics, and erecting new where none were, <sup>9</sup>Theodore did five in *Mercia cum consensu regis et principum [illius]*, (without ever sending to Rome) as he did others <sup>10</sup>elsewhere. Henry I., long after, placed episcopal chairs at Ely and Carlisle, without acquainting the popes with it. [And he and his brother did <sup>11</sup>constituere and *confirmare* (in Batha) *sedem episcopatus totius Summersete, quae olim erat apud villam quae dicitur Wella.*] It is true, Anselm, an Italian, either not knowing the rights of the kingdom, or rather out of

<sup>1</sup> W. Malmesbur. [de Gestis Pontif.] Lib. I. [p. 231, l. 57, etc.]

<sup>2</sup> Gervas. Dorobern. col. 1663, l. 64, etc.

<sup>3</sup> Eadmer. p. 14, l. 13: p. 30, l. 9: p. 93, l. 3.

<sup>4</sup> Ibid. p. 58, l. 43.

<sup>5</sup> Ibid. p. 115, l. 48.

<sup>6</sup> [Ibid.] p. 129, l. 52. See § 20.

<sup>7</sup> Vid. Bed. Lib. iv. c. 2, 6: Ger.

vas. Dorobern. col. 1638, l. 37.

<sup>8</sup> Mat. Paris, [Hist. Major] A.D. 1095, p. 20, l. 46: Alred. Rievallens. [de Vita Edw. Confess.] col. 406, l. 10.

<sup>9</sup> Florent. Wigorn. [Chronicon] A.D. 680, p. 688.

<sup>10</sup> Bed. Lib. iii. c. 7: Lib. iv. c. 6, 12: Lib. v. c. 19.

<sup>11</sup> [Charta Hen. I. apud Monastic. Anglican. [Tom. I.] p. 185, b, l. 46.]

a desire to interest the pope in every thing, writes to him of Ely, that <sup>12</sup>*de vestræ pendet auctoritate prudentiæ* to add strength to ecclesiastic ordinances of this nature; yet it is clear by his very letter, the king, bishops, and nobility had already concluded on it, with whom he had concurred, asking Paschalis' assent after the deed done: which shews rather he did it in civility, than of necessity, *ne a posteris ulla præsumptione violenter*, that no cavilling might arise in the future to the disturbance of an action well settled, that passed by so great advice, as not only the English church, but the first bishop of the world and patriarch of the west, joined in seeing the needfulness of it. And it is here not unworthy the remembering, that queen Mary, how much soever addicted to Rome, yet admitted the <sup>13</sup>bishops of those sees her father had erected during the schism (as they called it) to sit in parliament, before any confirmation of them by the pope.

25. Of these and the like, though cases proper for the <sup>14</sup>papacy alone, yet being without scruple exercised in the church 26 of England, and no control from Rome, it would not be easy to dispossess the archbishop of meddling with, by strong hand; especially on an essay made before in the case of Wilfred, it being affirmed, <sup>15</sup>*quod esset contra rationem, homini jam bis a toto Anglorum concilio damnato, propter quælibet apostolica scripta communicare.* The way therefore of making him the pope's legate was invented, by which those particulars he did before without interruption of his own right, he (whom it was not easy to bar of doing them) might be said to act as his agent; which was about <sup>16</sup>this time first committed unto him of any archbishop of Canterbury; though <sup>17</sup>Baronius, not finding how the very same passed before, fancies Theodore to have done them, *cui [non solum Dorovernensis ecclesiæ, sed] totius*

<sup>12</sup> Eadmer. p. 95, l. 50.

<sup>13</sup> Gloucester and Chester. See 'Journals of the House of Lords,' in Parliam. 1<sup>o</sup> Mary, April 2, 1554; and also in Parliam. November 12, 1554, 1<sup>o</sup> & 2<sup>o</sup> Phil. & Mary. Yet the Act of reconciling this kingdom to Rome, and confirming those bishoprics by the pope, passed not till November 30 after; however, they were reputed lawful bishoprics before.

<sup>14</sup> [Corpus Juris Canon. Decret. Part

1.] Caus. III. quest. vi. c. 7 [Tom. I. p. 180]: de Translatione Episcopi, c. 1 [Tom. II. p. 28]: Bellarmin. de Conciliis et Ecclesia, Lib. iv. c. 8 [in Disputation, Tom. II. p. 289, n.]

<sup>15</sup> Apud W. Malmesbur. [de Gestis Pontif. Lib. III. p. 267, l. 26, etc.]

<sup>16</sup> A. D. 1127.

<sup>17</sup> Baron. Annal. Tom. VIII. ad an. 676, x.

*Angliae a Romano pontifice veluti apostolicae sedis legato cura credita erat.* [As for the subscription in the <sup>1</sup>*Monasticon Anglicanum*, where he writes himself *Romana legatione in has fines terrae destinatus*, it can import no other but that he was sent from Rome (of which see <sup>2</sup>Bede) unless we contradict all story. But I confess, for my part, I hold those subscriptions to be supposititious; for neither did archbishops then subscribe above princes, neither did Theodore himself, in deeds less subject to corruption, <sup>3</sup>so style himself, or ever any write themselves, *Sedis apostol. legatus*, till long after.] And he certainly, if he were his legate, was very immorigerous in the case of Wilfred. But to leave that as a *chimæra* not to be assented to, mentioned by no ancient author, it is true, not long after, he conferred the title of *legatus natus* on the archbishop, <sup>4</sup>of which hereafter.

26. To return to the archbishop, who came home with this legatine power 1127, <sup>5</sup>crowns the king at Windsor, and in May following holds a council at Westminster, *cui præsedit ipse, sicut apostolicae sedis legatus*; which is the first council any archbishop is noted to have held as a papal legate, and during his life, which was seven years, England did not see any other<sup>6</sup>.

27. After his death, the see of Canterbury lay two years vacant, so a fit time for the pope to look this way; especially king Stephen making it part of his title, that he was <sup>7</sup>confirmed by him in his kingdom: therefore, 1138, Innocentius the second sent hither Albericus, bishop of Ostia, the second stranger I find exercising the legatine authority in England; yet he was not at first received for one, but <sup>8</sup>*vix tandem pro reverentia domini papæ*. He indeed went farther than ever any had, called the clergy *apostolica auctoritate* (as our historians term it) to a synod. I confess he avoids the word in his letters of

<sup>1</sup> [Tom. I. p. 67.]

<sup>2</sup> [Hist. Eccl. Lib. iv. c. 1.]

<sup>3</sup> [Spelman. Concil. Tom. I. p. 167.]

<sup>4</sup> § 40, *infra*.

<sup>5</sup> [Continuatio ad] Florent. Wigorn. A.D. 1126, 1127, et seqq. [pp. 662, 663.]

<sup>6</sup> [To which council the archbishop of York was summoned, and, on his neglect to appear, Canterbury complained to the king, *quasi dignatus esset ad suum concilium venire*: yet his majesty replied, *et merito; magnum enim ei dedecus in mea curia fecisti, mihi vero non*

*minus.* Stubbs, de Archiep. Eboracens. in vit. Thurstan. col. 1720, l. 15. See more, c. v. § 12.]

<sup>7</sup> Apud W. Malmebur. [Hist. Novell. Lib. i. p. 179, l. 35]: Johan. Hugustaldensis Hist. Continuat. [inter Scriptores x.] col. 269, l. 9: Richard. Hugustaldensis Hist. [inter Scriptores x.] col. 314, l. 18: cf. col. 313, l. 32.

<sup>8</sup> Gervas. Dorobern. col. 1344, l. 6. [“*Demum suscipitur.*”] Continuatio ad Florent. Wigorn. p. 669.]

summons, styling it <sup>9</sup>*colloquium*, perhaps not to enter into dispute with the king [and archbishop], who then took themselves to be the only <sup>10</sup>callers of them, and the allowers of what they did, [removed some and instituted others in abbeys, assigned <sup>11</sup>a day for appearing in Rome,] commanded the prior and convent of Canterbury, &c., <sup>12</sup>to choose such an archbishop, *cui sacrorum canonum auctoritas in nullo valeat obviare, cui [etiam] comprovinciales episcopi pariter debeant assentire, et cui dominus [noster] rex nec possit nec debeat assensum suum juste denegare*: but farther not at all intromitting himself. And in the council he held, amongst other particulars, he ordained, that if any injured an ecclesiastic person, <sup>13</sup>*nisi tertio admonitus satisficerit, anathemate feriatur, neque quisquam ei praeter Romanum pontificem, nisi mortis urgente periculo, modum pænitentiae finalis injungat*. This is the first that, by canon, aught done in England was referred to Rome, as having a greater power than the English bishops to absolve: (of the laws of Henry I., I shall speak <sup>14</sup>hereafter). But whether it were not here much regarded, or the excesses used by king Stephen against certain bishops, and the prohibiting a council held at Winchester to send to Rome, as <sup>15</sup>against the dignity of the realm, or that he, freed of imprisonment, desired to make so potent a party, as the clergy then was, more of his side, I cannot say; but it seems to have been again renewed in a <sup>16</sup>council at London about some four years after, [if the author do not mistake the time].

28. The same pope, 1139, conferred upon Henry, king Stephen's brother, and the potent bishop of Winchester, this legatine power, which was by him published in a council at Winchester, where his faculties were read <sup>17</sup>bearing date the 1st of March; and being as well <sup>18</sup>*Anglice dominus* by reason of the power he held with Stephen, as *apostolicæ sedis legatus*, he called thither the archbishop, that had then some contest with 28

<sup>9</sup> Gervas. Dorobern. col. 1346, l. 58.

<sup>10</sup> Eadmer. p. 6, l. 29: p. 24, l. 11.

<sup>11</sup> [Johan. Hagustald. col. 264, l. 58.]

<sup>12</sup> Gervas. Dorobern. col. 1347, l. 3, etc.

<sup>13</sup> Cap. ix. apud Gervas. Dorobern. col. 1348: Richard. Hagustald. col. 328, l. 6, etc.

<sup>14</sup> § 30.

<sup>15</sup> W. Malmesbur. [Histor. Novell. Lib. II. p. 183, l. 35.]

<sup>16</sup> Hen. Huntind. A.D. 1142. [Hist. Lib. VIII. p. 393, l. 6: inter Rerum Anglicarum Scriptores.]

<sup>17</sup> W. Malmesbur. ubi supra, p. 182, l. 29.

<sup>18</sup> Gervas. Dorobern. col. 1343, l. 44.

the monks of St Augustine's, (whom the pope generally favoured against him) referred to his decision from Rome, so that he caused both parties the <sup>1</sup>second time to appear there before him, 1143, as legate, and by compromise ended the business. Yet this calling of the archbishop <sup>2</sup>unto him was not taken well ; and the same year, 1143, he did by apostolic command restore Jeremy, removed by Theobald (notwithstanding his appeal to Rome), to be prior of Canterbury : which restitution the said prior did not think fit to stand by, but for avoiding trouble took an hundred marks to pay his debts, and placed himself in St Augustine's. By these carriages there grew distastes between these two great prelates ; the one, as archbishop, prohibited Winchester <sup>3</sup>all ecclesiastic functions, however the pope's legate ; and both apply themselves to Rome : from whence our historians do fetch the use of appeals to it—as indeed there could not well be any cause of them before—for as the one case is the first ever any archbishop was called out of his diocese to make answer to any legate as his superior ; so I believe it will be hard to give an example of aught done by the archbishop in his own bishopric till now altered by a foreign authority. And here, having mentioned the introducing of appeals, the reader will give me leave to digress a little, both to shew what is meant by them, and the manner of prosecution of them ; and then <sup>4</sup>to return, and observe the event of the archbishops and legates in the court of Rome.

29. It cannot be denied, the word “appeal” to have been used in former times with reference to the papacy. <sup>5</sup>*Cum præsul sedem apostolicam appellasset*, says Malmesbury of Wilfred ; and a council held in Italy concerning him, <sup>6</sup>*apostolicam sedem de sua causa appellans* : and so of some others. Yet nothing is more certain than those, in whose time this was, did not at all hold the pope to have any power of righting him, other than by

<sup>1</sup> W. Thorne, col. 1803, l. 32.

<sup>2</sup> Gervas. Dorobern. col. 1665, l. 25 : *Indignatus Theobaldus.*

<sup>3</sup> Johan. Hagustald. col. 275, l. 42 : *Interdixit [etiam Archiepiscopus] episcopo episcopale et sacerdotale officium.*

<sup>4</sup> § 40.

<sup>5</sup> W. Malmesbur. [de Gestis Pontif. Lib. III. p. 262, l. 25.]

<sup>6</sup> Bed. Lib. v. c. 19, [p. 207, l. 32.]

et in Ingulpho MS. seu Additionibus ejus, in Biblioth. Cotton. [There is now no MS. of Ingulph in the Cotton Library. It was probably destroyed in the great fire. In Dr Smith's Catalogue (Oxon. 1696) there is the following entry, p. 71 : *Historia sive, ut titulus habet, descriptio compilata per D. Ingulphum Abbat. Monast. Croylandiæ.*]

intercession; not as a superior court, by sentencing in his favour, to undo what had passed Theodore; <sup>7</sup> without whose assent the king could not have deprived him of his seat, for when the pope's <sup>8</sup> letters were brought hither for his restitution, Egfrid, with the advice of his bishops, not only refused, but clapped Wilfred in prison; and after his death the <sup>9</sup>pope sending others *vita graves et aspectu honorabiles*, Aldfrid, though he received the men with great reverence, yet would by no means admit the restoration they came about, but affirmed it against reason to do it, he having been twice condemned [*a toto Anglorum concilio propter quaelibet apostolica scripta*].

30. For the understanding of which, we are to know the word "appeal" is taken several ways; sometimes <sup>10</sup>to accuse, sometimes for referring ourselves to some one for his judgment; such was that of Wilfred's appealing to Rome, as to a great spiritual doctor and church, whose judgment was very venerable in the world; as of late John Calvin's and the church of Geneva was to them of Scotland and Frankfort, &c. Another way we take it for removing a cause from an inferior to a superior court or judge, [whom all parties acknowledge invested with a legal right of vacating, upon full hearing and just cause shewn, any former sentence or proceeding]: and this is that our historians affirm not to have been in use till after 1140.

[But—because I find this example of Wilfred much insisted on, as expressing "<sup>11</sup>evidently both the acknowledgment and exercise of the pope's authority in those days, as also the devout and prompt obedience of our christian kings and prelates thereunto, in that holy time of our first primitive church"—and <sup>12</sup>another, to "wonder at the late archbishop of Canterbury," of happy memory, "for <sup>13</sup>saying, in ancient time, Britain was never subject to Rome," (than which there is nothing more true); and will evince by the appeals of Wilfred (in the times of the

<sup>7</sup> Stubbs, *Actus Pontif. Eboracens.* col. 1691, l. 10.

<sup>8</sup> W. Malmesbur. [de Gestis Pontif. Lib. III. p. 264, l. 10.]

<sup>9</sup> Ibid. p. 267, l. 25.

<sup>10</sup> "Blattius de proditione Dasium appellabat." *Liv. Lib. xxvi. c. 38.* Such were those appeals in Parliament, <sup>11<sup>o</sup></sup> & <sup>21<sup>o</sup> Ric. II., which might be otherwise called accusations. [Vid. Rot. Parl. sub</sup>

ann.] [See also Sir Edw. Coke's *Institutes*, Part I. fol. 123, b, § 189: fol. 287, b, § 500.]

<sup>11</sup> [Catholicke Devine, *Answe to Syr Edw. Cooke, cap. vi. § 53, p. 135.*]

<sup>12</sup> [Labyrinthus Cantuar. p. 189, § 5.]

<sup>13</sup> [Relation of a conference [with Fisher, by Archbp. Laud] § 25, n. 10, p. 111,] [ed. Lond. 1673.]

Saxons) to have yielded obedience to that see—I shall beg leave a little to digress.

[Wilfred, bred in France and Italy, wholly addicted to the customs of Rome, after his having been some years in York, there grew so great differences between him and Egfrid, king of the Northumbrians, as he was removed from his episcopate in the year 678: yet not by violence, but canonically; Theodore, the then archbishop of Canterbury, and divers other bishops joining in the action,<sup>1</sup> without whose concurrence the king alone could not have displaced him. Upon which, he addresses himself to go to Rome, and after long expectance comes thither,<sup>2</sup> *tandem aliquando coram apostolico papa causam dicturus*; where, in a petition to Agatho the then pope, he shews his putting out to have been<sup>3</sup> *contra jus regularium sanctionum, &c.*; yet that he had not appeared upon this injury contentious (as indeed I do not see it could have availed him, removed by the general consent of the king and English bishops); desired such as were the invaders of his preferments might be expelled, &c. Agatho (as what might conduce to the advantage of the papacy) shews himself well content at his petition; especially, at that clause of seeking to him for restitution, without imploring secular aid. This a council, then assembled at Rome, would needs interpret an appealing to that see, and is therefore said to have been so by such as writ after it, though Malmsbury remembers such as heard it, laughed at his endeavouring to have recourse thither....

[But that synod making a decree in his favour, Wilfred comes home *gloriabundus*, Egfrid still governing the north<sup>4</sup> *pio moderamine*; where he met (notwithstanding all his letters and determinations) cold entertainment, the king hardly admitting him to his presence, and on reception of the pope's missives, after consultation had with his bishops, lays him in prison: releasing him, as the event shews, on no other terms but to avoid those parts. He, being freed, converts the west Saxons. Theodore, not regarding any thing from Rome, continues three bishops in the north, where Wilfred alone had governed; and in

<sup>1</sup> [Sim. Dunelm. [epist. ad Hugonem inter Scriptores x.] col. 78, l. 17, et Stubbs, Actus Archiep. Ebor. col. 1691, l. 9.]

<sup>2</sup> [Bed. Lib. v. c. 19,] [p. 206, l. 31.]

<sup>3</sup> [Malmesbur. de Gestis Pontif. Angl.] [Lib. III. p. 263, l. 46.]

<sup>4</sup> [Sim. Dunelm. [Histor.] col. 92, l. 14.]

the year 685, in <sup>5</sup> York at easter, ordains St Cuthbert to Holy Island : not long after which, Egfrid fighting against the Picts dies (leaving Wilfred in exile), to whom Aldfrid succeeded. A.D. 686, St John of Beverley is made bishop of Hexham, an episcopacy had belonged to Wilfred : so hitherto there is no probability of any reconciliation with Theodore. For no man can think, in 685, himself would have consecrated Cuthbert, in 686 admitted John to Hexham, had he allowed the decrees of Rome as binding here ; so that the pacification, Malmesbury mentions, must be after that Theodore is said to have interceded with Aldfrid for his former preferments. Upon which a council is summoned at York, which doth <sup>6</sup> restore him, yet without vacating what had passed Theodore formerly : for not long after Britwaldus and the English bishops required his obedience to those acts of the archbishop, which, what they were, may be gathered by his petition delivered to Agatho, and another about twelve years after (his second expulsion) to John VII. By which it appears, the English church—finding Wilfred to have been archbishop of York, abbot of Hexham, Ripon, Holy Island, in fine, <sup>7</sup> sole superintendent in the north—did in his absence restore and erect two new episcopal chairs, one at Holy Island, the other at Hexham ; and Aldfrid, a pious learned prince, intended a third at <sup>8</sup> Ripon. Wilfred, when he returned, brought from Rome the decree of a council there held in these <sup>9</sup> words : *Statuimus atque decrevimus, ut Deo amabilis Wilfridus episcopus episcopatum, quem nuper habuerat, suscipiat, et quos cum consensu concilii ibidem congregandi elegerit sibi adiutores, a sanctissimo archiepiscopo ordinati promoteantur episcopi, expulsis procul eis, qui in ejus absentia in episcopatum enormiter missi sunt—et cætera, quibus interdicunt hæc non suscipientes decreta.* Of this resolution at Rome, being now seated in York, it seems he began to make use ; upon which, as contrary to the English liberties, the king, archbishop, and English bishops <sup>10</sup> charge him with disobedience to the

<sup>5</sup> [Rich. Hagustald. de Episcop. Hagust. Lib. I. c. 10 : [inter Scriptores x.] col. 295.]

<sup>6</sup> [Malmesbur. in vita, et Rich. Hagustald. col. 296, l. 23.]

<sup>7</sup> [Stubbs, Actus Pontif. Eborac. col. 1630, l. 67.]

<sup>8</sup> [Malmesbur. ut supra,] [p. 265, l. 50.]

<sup>9</sup> [Ibid. p. 264, l. 2, et seqq.]

<sup>10</sup> [“ Aldfrido et plurimis episcopis eum falso accusantibus de transgressione præceptorum Theodori.” Rich. Hagustald. col. 296, l. 23 : et Malmesbur. in vita,] [p. 266, l. 5.]

decrees of Theodore ; and, in fine, after four years' contest, expelled him out of his diocese : who retires into Mercia, and having been ousted twelve, and aged seventy years, enters on a second journey to Rome. Where, by petition to John VII., he shews he was compelled to have recourse to the holy apostolic see, by reason of certain troubles lately risen in Britain ; where the determinations (now not found) issuing from that chair in his favour, from Agatho and Sergius for his restitution had not been received, and where his opposers, if they had any thing whereof to accuse him, might likewise appear. And, having had experience how little entertainment the determinations of Rome found here, desired the pope would grant him recommendatory letters to Ethelred, king of Mercia, and Aldfrid of Northumbria ; promising obedience to all the decrees of Britwaldus, not repugnant to those had issued from that see. To which last, when such as were present for the English were wished to make answer, they replied somewhat sharply, but according to the rights of the nation, that he, having said in council he would not obey the decrees of Britwaldus, was to be punished capitally ; which right the kingdom had ever retained as to take no regard to any foreign sentence. See § 73. What to do in this seems not easy for Rome to pitch upon, (it being evident England would not admit him on any terms but their own) ; so that this produced not less than seventy <sup>1</sup>conventions there in four months. In the end, the way taken was by letter to intercede for his reception, without making any determination in the case : yet so far from justifying the former sentence, as what Theodore never had shewn to impugn (which, if true, was questionless knowing it contrary to the rights of England to admit any such appeals or judgments) ; and because Egfrid seemed to be of opinion (perhaps not willing to fall out with Rome) the former had been <sup>2</sup>*extorta pretio, non impetrata judicio*—to send messengers to the kings of Mercia and Northumbria, with a sober letter, yet extant, advising the calling a council here, in which all parties might be heard. *Siquidem apud illam synodum potuerit rem determinare, gratum erit nobis ; sin autem moneat eos ad sedem apostolicam accurrere, ut majori concilio decidatur, quod hactenus termi-*

<sup>1</sup> [“Conciliabula,” Malmesbur.] [p. 266, l. 53.]

<sup>2</sup> [Malmesbur. ut supra,] [p. 264, l. 42.]

*nari non potuit*<sup>3</sup>—so, in some manner, remitting hither to the English the reviewing what had already passed at Rome<sup>4</sup>.

[<sup>5</sup>Wilfred coming home, with the messengers sent from pope John, found the king of Mercia and the archbishop easily persuaded: some thought, the threats of the legates moved Brithwald (which is altogether improbable; for they were like-lier to have wrought on the inferior bishops, which, *suo more*, opposed his restitution). But coming to Aldfrid, he at first spake fairly to them, yet appointed a day for giving his fuller answer; at which, he would by no means assent to any restoring of him, giving this reason, it was unfit one, condemned by two English councils, should be restored for any apostolic writing whatsoever. But this prince taken away within a few months after, and his son Osred, a child, succeeding, governed by a tutor Brithfredus, the archbishop of Canterbury adviseth him to summon a council, at which was present Elfleda, sister to the late king, who succeeded Hilda in the monastery of Whitby, and as much made for Wilfred, as Hilda had been against him: with whom Brithfredus joining, the English bishops strongly opposing them, in the end a middle course is taken, viz. not to reject the intercession of the greatest patriarch and first bishop of the world, from whose see they had learned Christianity; yet to maintain the rights of their own churches and kingdom.

[Bosa had been bishop of York in Wilfred's expulsion, and St John of Beverley of Hexham: of these two, York had ever been the <sup>6</sup>metropolis, and both belonged to Wilfred. The synod, therefore, promotes John from Hexham to York, then vacant by Bosa's death, and placeth Wilfred in Hexham and Ripon; which Wilfred accepting, gave general content to the rest.

[How this story can be drawn for Rome to ground a right of appeals, or jurisdiction over the English church, I confess I do not see. All attempts from thence, by the English kings and church, being so stoutly resisted, I may add farther, this was a time <sup>7</sup>when the nation did most flourish, piety had the happiest progress in it, having *fortissimos christianosque reges*, every one desirous to learn and instructors at hand to inform them,

<sup>3</sup> [Malmesbur. p. 267, l. 57, etc.]

narrated at length by Malmesbury, p. 268.]

<sup>4</sup> [In these times there was no question but an archbishop might be tried by an English synod.]

<sup>6</sup> [Rich. Hagustald. col. 286, l. 16.]

<sup>5</sup> [See the following circumstances]

<sup>7</sup> [Bed. Lib. i v. c. 2.] [p. 143, l. 12.]

the kings persons against whom no exceptions can be had. Beda, <sup>1</sup> *adulari nescius*, says of Egfrid, he was *piissimus et Deo dilectissimus*; the like doth <sup>2</sup> Simeon Dunelmensis, or rather Turgotus; no elder writing passing him, without remembering his sanctity, as one built two monasteries and royally endowed them. Of Aldfrid, they <sup>3</sup> report him to have been a prince, well seen in divine and human learning, at whose increase of religion, <sup>4</sup> John VII. rejoiced, seeing the fervour of his faith. Those who <sup>5</sup> sided with them against Wilfred, men of great sanctity, standing in the calendar of the English saints, Theodore, Britwaldus, John of Beverley, Bossa, Cuthbert, Hilda—of whom the pope gives the testimony of her being an abbess of religious memory—so that it is not imaginable, they ventured on aught not complying with the rules of the christian church. And here we have to consider what the actors themselves were, not how succeeding writers censured them, when obedience to Rome was by some more cried up. It being not to be denied, but God out of his secret wisdom sometimes permits a good cause to be worse thought of afterwards than at present it merited; yet it is certain this was so little to the papal advantage, as in four hundred years succeeding, a second appeal was not attempted. I cannot pass away without commanding Baronius as well for his judgment in this as his industry (which all must acknowledge); who, however he was <sup>6</sup> too diligent (if we credit bishop Montacute) in compiling his annals out of the lives and passions of saints, omitting other writers of better note, yet, when he treats of Wilfred, contents himself with what he finds in <sup>7</sup> Bede, epitomising it; not as in Malmsbury, where the passages are much more fully related, but less agreeing with the now pretensions of Rome.]

30 Long after Wilfred, <sup>8</sup> the bishops and nobility did assure

<sup>1</sup> [Malmesbur. de Gestis Regum, Lib. 1.] [p. 20, l. 59.]

<sup>2</sup> [De Dunelmensi Ecclesia, Lib. 1. c. 9, p. 5, a. 1. 9: Sim. Dunelm. Histor. col. 92.] [Both these treatises are printed among the Scriptores x. The authorship of the former has been much questioned. Fabricius (Biblioth. Latinitatis Med. et Infim. Etat. Tom. VI. p. 278,) assigns it to Turgotus. See, also, Bp. Nicolson's English Historical Library, p. 128.]

<sup>3</sup> [Bed. Lib. iv. c. 26,] [p. 175, l. 4.]  
[Malmesbur. de Gestis Regum,] [p. 21, l. 1.]

<sup>4</sup> [Malmesbur. de Gestis Pont.] [p. 267, l. 10.]

<sup>5</sup> [Ibid. l. 37, etc.]

<sup>6</sup> [Rich. Montacute. in Praefat. Apparatus. [ad Origines Eccl. Oxon. 1635,] § 61.]

<sup>7</sup> [Baron. Tom. VIII. ad ann. 672, 679, et passim.]

<sup>8</sup> Eadmer, p. 39, ll. 21—38.

Anselm that for any of the great ones, especially him, to have recourse to Rome without the king's leave, to be *inauditum et usibus ejus omnino contrarium*; and therefore required of him an oath, *quod nunquam amplius sedem sancti Petri, vel ejus vicarium, pro quavis, quæ tibi queat ingeri, causa appelles*. I know Anselm, an Italian, where the opinion of the papal plenitude had now begun to root, did maintain this was *Petrum abjurare*, and that *Christum abjurare*, and is the first of our bishops spake any thing in that sort; with whose sense the kingdom did not concur in it. For it is manifest, in those days and after, appeals to Rome were not common. In the year 1115, <sup>9</sup>Paschalis II. expostulates with Henry I. that *nullus inde clamor, nullum judicium ad sedem apostolicam destinatur*: and again, <sup>10</sup>*vos oppressis apostolicæ sedis appellationem subtrahitis*. And Anselm himself, speaking of the proceeding of the king, in a case by him esteemed only of ecclesiastic cognizance, lays down the manner to be, that it should be only <sup>11</sup>*ad singulos episcopos per suas parochias; aut si [et] ipsi episcopi in hoc negligentes fuerint, ad archiepiscopum et primatem*; adding nothing of carrying it to Rome, of which I know no other reason, but that it was not then usual to remove causes from the primate thither. Yet after this, either the importunity of the pope prevailed with the <sup>12</sup>king, or the passage was inserted after his days into the laws carry his name; (as some other in the same chapter may seem to have been). Certain in them, though he gave for a rule that of pope <sup>13</sup>Fabian or Sixtus III., *ibi semper causa agatur ubi crimen admittitur*; yet a bishop erring in faith, and on admonition appearing incorrigible, <sup>14</sup>*ad summos pontifices* (the archbishops) *vel sedem apostolicam accusetur*. This is the only case, wherein I find any English law [did ever] approve a foreign judicature.

31. [To speak sincerely and without partiality what I find—it cannot be denied after the conversion of the English, under Gregory the great, the Saxons did ever carry a very high

<sup>9</sup> Ibid. p. 113, l. 3.

<sup>10</sup> Ibid. p. 115, l. 31.

<sup>11</sup> Ibid. p. 85, l. 42, etc.

<sup>12</sup> Hen. I.

<sup>13</sup> Fabiani Epist. IIII. [§ 4, apud Labb. Concil. Tom. I. 646,] et apud Gratian. Caus. iii. Quæst. vi. c. 1. [Vid. Corpus Juris Canon. Decret. Part. II. Tom. I.

p. 179, ed. 1687.] Leges Hen. I. c. 5, p. 178, l. 28, [in 'Archaionomia', ed. Cantab. 1644; or in "Ancient Laws and Institutes of England," ed. 1840, Vol. I. p. 508, § 12.]

<sup>14</sup> [Leges Hen. I. c. 5. Ancient Laws, &c. Vol. I. p. 509, § 23.]

respect to the bishop of Rome, as patriarch of the west; yet never did make any judicial appeal unto him as to a superior, had a right of dominion over them. And therefore, in all the ancient councils or penitentials (as Theodore's, which I have before me, or Egbert's) neither do I find any mention of such appeals, nor rule to guide men in the making of them. Egbert—who about 740 had recovered from the papacy the use of the pall, which Paulinus had carried to Rochester—did in a case of difficulty allow recourse unto it, from a canon taken out of a <sup>1</sup>Roman council; which was no other, but as Kenulphus (of whom <sup>2</sup>before), *quibus a Deo merito sapientiae clavis collata est*—as to men of great literature. But neither did Lanfranc admit any thither, nor popes much press it, as is manifest by that epistle <sup>3</sup>of Gregory VII. to Lanfranc, 1074: wherein he not at all requires the bishop of Norwich's coming to Rome, unless he as archbishop could not stay him molesting the abbot of St Edmundsbury; who himself, notwithstanding this so earnest solicitation from the pope, *ipsum privilegium abbati abstulit nec illud ei nisi circa finem vite sue (in 1089) multorum precibus motus reddere voluit*. So as certainly neither pope nor appeals had yet got any great strength in England. But there being, in the see of Canterbury, two Italians, one succeeding the other, men of great esteem for piety and literature—the one, delivering himself so fully for appealing to Rome as if denying any to go thither was renouncing <sup>5</sup>Christianity, and Henry I. seeming to tolerate it in some cases <sup>6</sup>as to a great spiritual doctor—this of appeals was soon laid hold on. About the beginning of king Stephen there grew some dispute between William, then archbishop, the prior, one Elmerus, who joined with him, and the convent of Canterbury, who opposed both and sent one Jeremias; who—appearing before the bishops of Rochester and St David's, sent to Dover by the archbishop of Canterbury for terminating the business—put in an <sup>7</sup>appeal to Rome. But that, by reason of the death of the archbishop and Elmerus, which

<sup>1</sup> [Excerptiones Egberti, § 48, ex can. Roman. apud Spelman. Concil. Tom. I. p. 263.]

<sup>2</sup> [p. 23.]

<sup>3</sup> [Epist. xx. in Lanfranc. Opp. p. 311, d.]

<sup>4</sup> [Eadmer. p. 62, l. 36.]

<sup>5</sup> [Ibid. p. 40, l. 33.]

<sup>6</sup> [Ibid. cap. v. § 23, Vol. I. p. 509: cap. lxvi. § 2, Vol. I. p. 569: cap. lxxiii. § 6, Vol. I. p. 578, in "Ancient Laws and Institutes of England."]'

<sup>7</sup> [Gervas. Dorobern. col. 1342, l. 16.]

soon after ensued, slept (at least seems so to me); and Jeremias elected prior added much to the choosing Theobald, who succeeded in the see, and at first was well esteemed by him: but after, the distance between them became so great, as he, fearing to be dismissed his priory, was forced to a second appeal. These are the two first I have read of (unless that of Anselm, which the kingdom never admitted): which Theobald not <sup>8</sup>regarding forced Jeremias to a journey to Innocentius II. who gave order to the bishop of Winchester, his legate, to restore him—from whence our <sup>9</sup>historians note the beginning of appeals to Rome. But take it in my author's <sup>10</sup>words, though it seems to have reference to the times a little later: *Erat autem in diebus illis apostolice sedis legatus Henricus Wintoniensis episcopus, qui erat frater regis. Hic cum de jure legati, licet privilegium suum plusquam deceret extenderet in immensum, suumque archiepiscopum et episcopos Angliae ut sibi occurrerent quolibet evocaret, indignatus Theobaldus et Thomae clericu*l* Lundoniensis industria fretus, egit apud Cœlestinum papam, qui Innocentio successit, ut amoto Henrico Theobaldus in Anglia legatione fungeretur. Oriuntur hinc inde discordiae graves, lites et appellationes antea inauditæ*: which must be 1143 or 1144, before the eighth of March; for then Cœlestinus died, having continued in the chair only five months and thirteen days—but questionless shews the beginning of appeals to have been about that time.

[The clergy (then a powerful estate) easily hearkened to this of appeals; for the thing then endeavoured being the wresting investitures from princes—which the papacy did in some measure, by timing of it, procure—and the <sup>11</sup>exempting the clergy

<sup>8</sup> [Ibid. col. 1359, l. 41.]

<sup>9</sup> [Huntindon. Hist. Lib. viii. p. 395, l. 26: Gervas. Dorobern. A. D. 1151, col. 1369, l. 65.]

<sup>10</sup> [Gervas. Dorobern. col. 1665, l. 19, et seqq.]

<sup>11</sup> [Because I have treated of appealing to Rome, with which was joined the imprisoning of clerks by the secular magistrate—which was known to be the greatest difference between the crown and the church, Henry II. and Becket—and the ground on which the archbishop claimed that immunity (so far as I know)

not being by any of the writers of that age set down, it will not be unworthy the searching how it came into this kingdom, that clerks should not receive punishment for enormous crimes as well as other subjects. As soon as emperors began to be Christians, they did in many particulars shew the favour they bore the religion they professed. Constantine the great, 319, exempted those called *clericu*l**, *ab omnibus omnino muneribus*, that they might wholly attend divine service, (Cod. Theodosian. Lib. xvi. de Episcopis, etc. § 2.) But this seems to have gone a

from the jurisdiction of the secular magistrate, nothing could be thought more conducing to those ends than the drawing them to a foreign tribunal, that the pope might take cognizance of what passed by way of appeals, as their supreme judge. For attaining which, a fit time was to be taken in the reign of a prince, not only devoted to Rome, but when there was a pragmatic archbishop who laboured to advance that see above his own; both which concurred in Henry II. and Becket<sup>1</sup>. A man, certainly very able for businesses, that knew how to be obsequious to those he was to rise by, and had thereby crept into the favour of Theobald the archbishop; first taken notice of for <sup>2</sup>procuring letters from Rome to the archbishop, inhibiting

little too far, as not admitting them to any office of honour. Constantius therefore and Constans, 353, declare the *exaction munera sordidorum* should not be exacted of them, which they do extend to their wives, children, and servants, (Ibid. §§ 10, 14, 15.)—a certain sign *clericis* were then married. And thus it stood, some princes adding, others retrenching from that their predecessors had done, according to the exigencies of the present occasions. In the year 539, Justinian established such of the clergy as were to suffer, *prius hunc spoliari, a Deo amabili episcopo, sacerdotali dignitate, et ita sub legum fieri manu*; but how this despoiling them should be, adds nothing at all, (vid. Novell. Constit. lxxixii. in fine Prefat.) Which the clergy easily laid of that it should be according to the tenth canon of the second council of Carthage, which established, about the year 390, the criminal cause of a bishop should not be heard by less than twelve bishops; of a priest, six; of a deacon, three, with their own diocesan. [Vid. Concil. ed. Labb. Tom. II. 1056, A.] The difficulty of assembling so many bishops caused some, the church of Rome thought worthy of punishment, to escape; as a priest for heresy, marriage, or the like. Gregory IX. therefore, about 1230, in the point of heresy, allowed the bishop, calling to his assistance certain religious and learned persons (which is likewise pursued by the Council of Trent) might proceed to

degradation. [Vid. Lib. Sixt. *Decretal.* Lib v. de *Hæreticis*, c. 1; et *Concil. Trident. Sess. xiii. de Reformatione*, c. 4.] That this exempting the clergy was ever taken notice of in England, during the Briton or Saxon's time, I have not read. The first that I note speaks any thing of it in our laws, is Canute the Dane, who coming from Rome about 1032, at his recognizing the English laws, inserts amongst them somewhat on this point.] [The reference is probably to the laws of King Cnut, § 41, 'Of men in holy orders': see *Ancient Laws and Institutes*, Vol. I. p. 401.]

<sup>1</sup> [There is no question the true cause, why both he and Anselm did, with so great earnestness, labour appeals to the pope, was to free themselves from regal jurisdiction; which was the same in the presbyters in Scotland, to reduce all to their general assembly, where the king could never receive justice, (Spotswood's *Hist. of the Church of Scotland*, pp. 317, 425.) It is certain the sanctity of life and knowledge of Anselm, the odiousness of Becket's murder, both for the manner of doing it, and the place wherein the fact was committed—falling in a time and under a prince, who would submit, even to scourging, rather than contest with the Roman chair—did infinitely increase the power of that see with us, which his canonizing did not a little add unto.]

<sup>2</sup> [Gervas. Dorobert. col. 1371, l. 65.]

the crowning of Stephen's son—a strange act, as if the pope had to meddle with coronations, or the rights of the crown; whereas it had ever been held the correspondence between the English and Romanists had been no other than *voluntate et beneficio*, that Canterbury had no intermediate spiritual superior between him and Christ. Becket was the first interposed the pope: for thus writes Fitz-Stephens, when those wicked men came without any warrant to kill him in the church, and some questions passed: *Reginaldus Ursonis; A quo ergo habes archiepiscopatum? Ille; Spiritualia a Deo et domino papa, temporalia et possessiones a domino rege*<sup>4</sup>. And a little <sup>5</sup>after: *Si omnes gladii Angliae capiti meo immineant, ab observatione justitiae Dei et obedientia domini papæ, terrores vestri me dimovere non poterunt*<sup>6</sup>: which is much other language than the bishops used in Anselm's time, in the case of investitures, going to Rome, &c., as we have seen before, and shall see more hereafter<sup>7</sup>. To return, however, to the subject of appeals] it is 31

<sup>3</sup> [“Manifestum est et omnibus fere notum, reges Angliae soli Deo obligari et teneri ex ipsius regni adeptione, et ecclesiae Cantuariensis ex coronatione.” Gervas. Dorobern. col. 1338, l. 35, etc.]

<sup>4</sup> [In MS. Vita Thomæ Archiepiscopi et Martyris Cantuar. Eccl. in Biblioth. Cotton.] [Julius, A. xi. : fol. 143, a, col. 2. This life is now printed: vid. Histor. Anglican. Scriptores, ed. Sparke, ‘Vita S. Thomæ, a W. Stephanide scripta,’ p. 82.]

<sup>5</sup> [Sparke, ibid. p. 83.]

<sup>6</sup> [Though Becket seems to carry such reverence to the pope, yet when he sent two legates to determine the points in difference between the king and him, Saresberiensis says, first of one: *certissime constat, quod dominus Cantuariensis iudicium cardinalis ad vincula non subire disposuit, multis (ut puto) et justis suspicionibus motus, quia manifestus adversarius ejus hactenus existit*, (Johan. Saresberiensis Epist. ccxiv. [p. 376])—and afterwards of both (these two cardinals being, it seems, men of integrity): *domino Cantuariensi persuasum est, ut istorum cardinalium aut aliorum, qui fructum legationis expectant in terra, regis Angliae iudicio se nulla ratione sub-*

*jiciat* (Epist. ccxiv. [p. 392,]) so that all must be as he would have it. Which made him write those two sharp letters, Baronius hath given the world, (Tom. XII. ad an. 1168, VIII. x.), and which Saresberiensis could no way excuse, but by confessing saints have their frailties. Epist. ccxii. ccxvii.]

<sup>7</sup> [As for the differences between Becket and his prince, it is not to be denied, the clergy of those times were by the exemptions, then newly granted, grown somewhat insolent, so as in Theobald's time the king had in general received some sinister opinion of them. But whether by the wisdom of the archbishop it was stopped then is not certain; whom this active clerk succeeding, there was quickly an occasion offered, and as soon laid hold on. The first was this: a certain clerk in Worcestershire, having abused an honest man's daughter, did after kill the maid's father. Him the king would have tried by the secular magistrate; which Becket would no wise permit, and caused him to be kept by the bishop that he might not be delivered to the king's justice. Another, having stolen a certain silver chalice from a church, the king would have tried by

certain, 1151, they were held a <sup>1</sup>cruel intrusion on the church's liberty; so as in the assize at Clarendon, 1164, collected by the body of the realm, <sup>2</sup>the eighth chapter is solely spent in shewing the right of the kingdom in that particular: which <sup>3</sup>Johannes Saresberiensis interprets, *quod non appellaretur pro causa aliqua ad sedem apostolicam, nisi regis et officialium suorum venia impetrata*. Whereupon the bishop of London moved Alexander III., Becket's cause might be determined <sup>4</sup>*appellatio remota*: at which the pope seems to be moved, and told him, *haec est gloria mea quam alteri non dabo*. And though it seems by a <sup>5</sup>letter of the same prelate, the king would have restrained his power only to such as had first made trial of receiving justice at home, *ex antiqua regni institutione, ob civilem causam nullus clericorum regni sui fines exeat, &c.*: and that too, if amiss, would have corrected by the advice of the English church: yet while the archbishop lived, that would not be hearkened to; but after his death, at the peace which, 1172, ensued between him and the church of Rome, it was only concluded, the <sup>6</sup>king not to hinder appeals thither in ecclesiastic causes, yet so as a party suspected before his going was to give security not to endeavour *malum suum nec regni*. But the kingdom meeting in parliament at Northampton, 1176, not fully four years after, would not quit their interest, but did again renew the assize of Clarendon, using in this particular somewhat a more close expression: <sup>7</sup>*Justitiae faciant querere*

his judges: the archbishop, on the contrary, degraded him, and cauterized him in the face—which last, being in some sort a *judicium sanguinis*, a corporal punishment, seems to me a secular judgment, however done by the archbishop. A third, Philip le Broc, a canon of Bedford, (or Philip de Brois, as Fitz-Stephen) having committed murder, and being questioned by the secular magistrates, could not abstain from injurious language against them. These exorbitancies of the clergy, which happened about the year 1164, caused the king to examine the thing, and it was justified in that, besides thefts, rapines, &c. *above a hundred murders or homicides had been in ten years committed by clerks*, (Gulielm. Neubrigensis, *de Rebus Angliae*,

Lib. II. c. 16.] [See also the Life of Becket, in Sparke, pp. 32, et seqq.]

<sup>1</sup> Henr. Huntindon. [Hist. Lib. VIII. p. 395, l. 15, etc.]

<sup>2</sup> Gervas. Dorobern. col. 1387.

<sup>3</sup> Johan. Saresberiensis Epist. clix. [p. 254.]

<sup>4</sup> Gervas. Dorobern. col. 1396, l. 31.

<sup>5</sup> Apud Rog. de Hoveden, [Annal. Part. Post.] A. D. 1166, [p. 502, l. 29, etc. inter Rerum Anglicarum Scriptores]: R. de Diceto, A. D. 1168, [Imagines Historiarum, col. 548.]

<sup>6</sup> [Vid. Hen. II. Epist. ad B. Exon. Episcop. inter Johan. Saresber. Epist. ccxc.] [p. 502.]

<sup>7</sup> Apud R. de Hoveden, ubi supra. [p. 550, l. 9, etc.]

*per consuetudinem terrae illos, qui a regno recesserunt; et nisi redire voluerint infra terminum nominatum, et stare [ad rectum] in curia domini regis, [postea] uthlagentur, &c., in effect the same as Gervasius Dorobernensis well understood, who tells us: <sup>8</sup> *Rex Angliae Henricus, convocatis regni primoribus apud Northamptoniam, renovavit assisam de Clarendonia, eamque præcepit observari; pro cuius execrandis institutis beatus martyr Thomas Cantuariensis usque in septennium exularit, et tandem glorioso martyrio coronatus est.**

32. After which, the going to Rome remained during this king's and his son Richard's time, only according to their <sup>9</sup> pleasures, the clergy lying under the penalty of this law, if they did attempt farther than the prince's liking: of which we have a very pregnant example in the case of Geoffry, archbishop of York, king Richard's brother, who—accused to Cœlestinus III. that he did not only <sup>10</sup>refuse appeals to Rome, but imprisoned those who made them—upon it the pope <sup>11</sup>commits the cause to be heard by the bishop of Lincoln and others, who thereupon <sup>12</sup>transfer themselves to York; where hearing the testimonies of those appeared before them, assigned him a time to make his defence to the pope. But the archbishop, being then well with his brother, pretended he could not present himself in Rome <sup>13</sup>for the king's prohibition, and the indisposition of the air. Not long after the king and he fell so at odds, <sup>14</sup>*quod præcepit illum disaisiri de archiepiscopatu suo.* Cœlestinus upon this takes an opportunity to declare a suspension to be notified through all the churches of his diocese, enjoining, what the king had before, the lay as well as the clergy, <sup>15</sup>*ne ipsi archiepiscopo vel officiabilibus ejus in temporalibus [vel spiritualibus] respondere præsumant, donec de ipso archiepiscopo aliud duxerimus statuendum.* The offence with his brother continuing, the bishop expecting now no help at home, goes upon this to Rome, makes his peace with the pope, and returns: but the king <sup>16</sup>committed the care even of the spirituals of his archbishopric to others, without permitting him or his agents to meddle with aught, till about two

<sup>8</sup> *Chronica, A.D. 1172, col. 1433, l. 19, etc.*

<sup>9</sup> *[See Hoveden, A.D. 1193,] [p. 731, l. 24.]*

<sup>10</sup> *Epist. Cœlestini, apud R. de Hoveden, A.D. 1195, [p. 749, l. 55, etc.]*

<sup>11</sup> *Ibid. [l. 35.]*

<sup>12</sup> *Ibid. [p. 750, l. 50.]*

<sup>13</sup> *Ibid. [p. 751, l. 10.]*

<sup>14</sup> *Ibid. [p. 752, l. 52.]*

<sup>15</sup> *Ibid. A.D. 1196, [p. 763, l. 22.]*

<sup>16</sup> *Ibid. [p. 766, ll. 22—26.]*

years after he <sup>1</sup>reconciled himself to the crown; after which he 33 gave Innocentius III. occasion to write: <sup>2</sup>*Non excusare te potes, ut debes, quod illud privilegium ignoraris, per quod omnibus injuste gravatis facultas patet ad sedem apostolicam appellandi; cum et tu ipse aliquando ad nostram audientiam appellaris*; and a little after: *Nec auctoritatem nostram attendis, nec factam tibi gratiam recognoscis, nec appellationibus defers quae interponuntur ad sedem apostolicam, &c.* And about the same time <sup>3</sup>Robert, abbot of Thorney, deposed by Hubert the archbishop, was laid in prison a year and a half without any regard had of the appeal by him made to the pope: [as before Walterus Parvus, prior of Canterbury, 1150, was by Theobald his archbishop dismissed <sup>4</sup>his priorship, notwithstanding his appeal to Rome, and committed by him to the abbot of Gloucester, prisoner, with an express command, *re eum aliquatenus exire permetteret*. And that this was no other than the right of the kingdom is manifest by the complaints made by Celestinus III., 1195 and 1196, against the archbishop of York <sup>5</sup>*plures pro eo, quod ad nos appellationes emiserant, vinculis fecit carceralibus vehementer astringi; personas ecclesiae suae, post appellationem ad nos factam, honoribus et beneficiis spoliavit, quosdam canonicorum, appellatione contempta, excommunicationi subjecit.* It is altogether improbable the archbishop should then concur in opposing appeals to Rome, had it not been warranted by the rights of the English church.]

33. But Innocentius III. having prevailed against king John, and the clergy great instruments in obtaining Magna Charta from that prince; either in favour of them, or for some other reason, there was inserted, <sup>6</sup>*Liceat unicuique de cetero exire de regno nostro et redire salvo et secure per terram et per aquam, salva fide nostra; nisi in tempore guerræ per aliquod breve tempus*—which clause seems likewise to have been in that of Henry III., to his father's <sup>7</sup>*in nullo dissimilis*: after which it is scarce imaginable how many petty causes were by appeals removed to Rome, and the archbishop forced to

<sup>1</sup> Ibid. [p. 778, l. 25.]

<sup>2</sup> R. de Hoveden, A. D. 1201, [p. 817, l. 53, etc.]

<sup>3</sup> Ibid. A. D. 1195, [p. 757, l. 17.]

[Epist. Celestin. III.] [p. 749, l. 55, etc.]

<sup>4</sup> [Gervas. Dorobern. col. 1313, ll. 6, 49.]

<sup>5</sup> [Hoveden, p. 749, l. 56, etc.]

<sup>6</sup> Magna Charta, apud Mat. Paris.

[Hist. Major.] p. 258, l. 53, etc.

<sup>7</sup> Mat. Paris. p. 323, l. 28.

appear [here] before any had the least authority from thence. [And who knows how far it might have proceeded, had not our kings interposed? Upon which, Nicholas IV. wrote <sup>8</sup>a querulous letter to Edward I., 1290, the twentieth of May, that ecclesiastic persons were not permitted to be called by the apostolic see out of the kingdom, in which yet it seems the king did not comply with him; for William Nottingham, clerk, in a parliament held after Michaelmas, the same year, petitioned he might pursue his appeal in the court of Rome, of which the king would not <sup>9</sup>hear as against his rights.]....

The popes, themselves wise men, saw the inconvenience, that these carriages must end either in rendering the archbishop contemptible, by taking all power out of his hands, or the realm resume its ancient right, and prohibit the carrying aught beyond seas, or admitting any legate into the kingdom—thought of the way of granting several privileges to the archbishopric, which first began about the time of Innocentius II., whom others followed.

34. Gregory IX. therefore, moved by one of them (which 34 seems to be St Edmund), writes thus unto him: <sup>10</sup>*Ut cum appellationis remedium non ad defensionem malignantium, sed ad oppressorum subsidium sit inventum*—yet the archbishop attempting sometimes *excessus corrigere subditorum*, *quidam eorum, ut correctionem effugiant, appellationes frustratorias interponunt*; *quibus si cite pro reverentia sedis apostolicæ humiliiter deferatur, illi ex impunitate deteriores effecti pejora presumunt, et alii eorum exemplo redduntur ad vitia proprieores*; *unde humiliiter postulatis,....ut providere super hæc solita diligentia deberemus, ut igitur auctoritati tue in rectis dispositionibus nihil tali prætextu deesse contingat, fraternitati tue præsentium auctoritate concedimus, ut, non obstante* <sup>11</sup>*frivolæ appellationis objectu, libere valeas in corrigendis subditorum tuorum excessibus officiis tui debitum exercere.*

<sup>8</sup> [“Nec personæ ecclesiasticae permittuntur extra regnum ipsum auctoritate apostolica evocari.”] Raynaldus, Annal. Eccl. Tom. XIV. ad an. 1290, § 33.]

<sup>9</sup> [Petit. in Parl. post festum S. Mich. 18<sup>a</sup> Edw. I.] [in Rot. Parl. § 57.]

<sup>10</sup> Bulla Gregor. IX. in antiquo MS.

dat. Interamna, 27 Junii, 1236.

<sup>11</sup> ‘Frivola appellatio’ quæ dicitur, vid. Lyndewode, [Provinciale, Lib. II. de Appellationibus, p. 116, i.] scil. “quæ est vana et inanis.....vel quando nulla causa est expressa, vel non legitima, dato quod sit vera; vel licet sit legitima, est tamen manifeste falsa.” Vid. ibid. verbo ‘Pallietur.’ [p. 116, e.]

35. <sup>1</sup>And for that his agents here, in their citations of the archbishop, did not use that respect unto him which was fit, but as Gervasius Dorobernensis observes of one of them, *2Legati privilegium [suum] plusquam deceret extenderet in immensum, suumque archiepiscopum et episcopos Anglie ut sibi occurrerent quolibet evocaret*—the same pope did therefore declare, that, *cum nimis indecens videatur, ut per literas apostolicas tacito <sup>3</sup>tuo nomine dignitatis inter privatas personas stare judicio compellaris, nos fraternitatis tuae precibus inclinati, auctoritate tibi praesentium indulgemus, ut per literas a sede apostolica impetratas quae de dignitate tua non fecerint mentionem respondere minime teneris.* Dat. Viterbii, 4 Non. Martii, Pontif. nono.

36. <sup>4</sup>And, because the archbishop had on many slight occasions been drawn beyond seas, to the great impoverishing the episcopacy, the same pope two months after writes: *Ea propter, venerabilis in Christo frater, tuis supplicationibus inclinati, fraternitati tuae auctoritate praesentium indulgemus, 35 ut per literas apostolicas extra Angliam invitus non valeas conveniri, nisi de indulgentia hujusmodi fecerint eae literae mentionem, aut per te aliquod factum fuerit per quod sit indulgentiae huic derogatum.* Dat. Perusii, 4 Non. Maii, Pontificat. nono.

Innocentius IV. *ut nullus sine speciali apostolicae sedis licentia, praeter legatos ipsius ab eis latere destinatos, in personam tuam presumat excommunicationis sententiam promulgare.* Lugduni, 13 Kalend. Octob. Pontif. 4.

37. It would be tedious to repeat all the bulls found in the said old MS. and other books since 1130 (for before it seems there was none in this kind) to conserve some power in the archbishopric, yet so as it might ever depend on Rome; and how much the papacy gained by these, every man sees.

I. The right of the archbishopric was, none by appeal, might remove any ecclesiastic cause from his judicatory: the pope grants, he shall proceed, notwithstanding a frivolous appeal.

II. The right was, <sup>5</sup>he was not at all under any legate:

<sup>1</sup> At Viterbo, 4 Martii, 1235.

<sup>2</sup> [Actus Pontif. Cantuar.] col. 1665, l. 21, etc.

<sup>3</sup> Sic MS., sed legendum tuor.

<sup>4</sup> At Perusium, 6 Maii, 1235.

<sup>5</sup> See before, § 17.

the grant is, he should not be tied to answer, if they did not mention his dignity in their citations.

III. The right was, he should not be drawn beyond the seas (of which in the next): the grant is, he should not be compelled to go, unless mention were made of that bull.

IV. The question was, "whether the pope might excommunicate any within the diocese of Canterbury: the grant is, none but a legate *de latere* should the archbishop.

Yet certainly popes did what they well could, retaining to themselves that vast power they then pretended, to conserve in the archbishopric some authority.

38. But the frequent citing him and others out of the realm, and the carrying their causes to Rome, did not at all satisfy the subject; whereupon the body of the kingdom, <sup>7</sup>in their querulous letter devised and sent by them to Innocentius IV., 1245, (or rather to the council at Lyons) claim as an <sup>36</sup> especial privilege, that no legate ought to come here, but on the king's desire, <sup>8</sup>*et ne quis extra regnum trahatur in causam*: and at the revising of Magna Charta by Edward I. the former clause was left out. Since when none of the clergy might go beyond seas but with the king's leave, as the <sup>9</sup>writs in the register, <sup>10</sup>acts of parliament, [expostulations from the papacy,] assure us; and what is more, if any were in the court of Rome, the king called them <sup>11</sup>home, not permitting any to go or abide there longer than his pleasure. Yet I do not say these times do not furnish examples of appeals or recourse thither, or receiving commands from thence: I know the contrary; but it was only between those, and in such cases, as the king (holding good correspondency with the pope) and state did either tacitly connive at, as in matters of small moment, or expressly give

<sup>6</sup> Cap. II. § 17.

<sup>7</sup> Apud Mat. Paris. p. 668, l. 3.

<sup>8</sup> Note, this is omitted in this letter in Mat. Paris, which is found in other MS. copies of the same, as in one my learned friend, Mr Wm. Dugdale, helped me to the sight of; the book itself belonging to Mr Roper of Lincoln's Inn, in which it is fol. 117, b, and ought to be in all. For in the 'Gravamina Angliae' sent to the same pope, 1246, one is: *Quod Anglii extra regnum in causis*

*auotoritate apostolica trahuntur.* Mat. Paris, p. 699, l. 10.

<sup>9</sup> Registrum [Brevium], fol. 193, b: [ed. Lond. 1687.] Sir Edw. Coke's Institutes, Part III. c. 84, p. 179.

<sup>10</sup> Parliament. apud Cantubrugiam, 12<sup>o</sup> Ric. II. apud Hen. de Knyghton [de Eventibus Angliae], col. 2734, l. 39, etc.: [Statutes of the Realm], 5<sup>o</sup> Ric. II. Stat. 1. c. 2.

<sup>11</sup> Hen. de Knyghton, col. 2601, l. 44, etc.

allowance unto. <sup>1</sup> And if otherwise, no person was so great, but he was forced to gain his pardon for the offence. To which purpose, the example of the <sup>2</sup>rich bishop of Winchester may not be unfitly remembered, who being a cardinal of the king's blood, was employed by Martin V. as general against the Bohemians, and to that end erected the cross, 1429, <sup>3</sup>Henry VI.; but two years after, caused a petition to be exhibited in parliament, <sup>3</sup>“that he the said cardinal nor none other should be pursued, vexed, impleaded, or grieved by the king, his heirs, or successors, nor by any other person, for cause of any provision, or offence, or misprision done by the said cardinal against any statute of provisors, or by cause of any exemption, receipt, acceptation, admission or execution of any bulls papal, to him in any manner made”: which was granted, and shews that without it he had been liable to punishment for his accepting and receiving of them. And here it is not unworthy the remembering, that this was the first cardinal England ever saw a privy councillor. He having sometimes sought that dignity in Henry the fifth's time, upon the news the archbishop of Canterbury gave the king notice of it, in a letter yet extant; which did so affect that prince, as he was sometimes heard to say, <sup>4</sup>“that he had as lief set his crown beside him, as see him wear a cardinal's hat.” But he being soon after taken away, and the honour conferred on this prelate in June, 1426, by Martin V., <sup>5</sup>at his coming into England the lords of his majesty's council caused him to make a protestation for his comportment in the future; and the eighth of Henry VI. it was agreed by the lords in parliament, he should be on the king's part required to attend his majesty's councils, *sub protestatione tamen subsequence, quod quotiens aliqua, materiæ, cause, vel negotia ipsum dominum regem aut regna seu dominia sua ex parte una, ac sedem apostolicam ex parte altera concernentia, in hujusmodi conciliis regiis communicand' et tractand' fuerint, idem cardinalis se ab hujusmodi consilio absentet, et communicationi eorundem, causarum, materiarum, et negotiorum non intersit quovis modo, &c.*—and yet his former engagement made to the council to be firm and inviolable. Upon

<sup>1</sup> [When Kemp was advanced to the bishopric of London by a papal bull, he utterly waived it, and submitted himself totally to the king's grace. Dugdale's Hist. of St Paul's Cathedral, p. 41.]

<sup>2</sup> Henry Beaufort.  
<sup>3</sup> Rot. Parl. 10<sup>o</sup> Hen. VI. § 16.  
<sup>4</sup> Hall [Unyon of the Twoo Famelies]  
<sup>20<sup>o</sup></sup> Hen. VI. [fol. 143, a.]  
<sup>5</sup> Rot. Parl. 8<sup>o</sup> Hen. VI. § 17.

which the said cardinal the eighteenth of December, 8° Henry VI., A.D. 1429, after his thanks to the king and lords, and his admitting the said protestations, *tanquam rationi consonas*, was received for one of the council. [Which protestation or oath seems likewise taken by cardinal Wolsey, "made *legatus de latere*; who not observing it might have paid dear for it, had not death put a period to the dispute.] But I return to that I was treating of.

39. The truth of this barring appeals is so constantly averred by all the ancient monuments of this nation, as one, not finding how to deny it, falls upon another way; <sup>38</sup> that if the right of appeals were abrogated, it concludes not the see of Rome had no jurisdiction over this church, except one should be so senseless as to imagine the prefect of the prætorian court were not subject to the emperor's authority, because it was not lawful to appeal from them, according to the law in the <sup>8</sup>Digests. To which I answer, that if it be granted (which is very <sup>9</sup>disputable) this law is to be extended to the emperor, yet it proceeded from himself, who might limit his own power: but he is desired to consider, this canon of appeals did not from any pope; for the Africans did, and the church of England doth maintain it as an inherent right of their own, to give laws in that particular, and ever had strong contests with the papacy about it, which held it an honour not to be parted with; and they opposing him in it, must of necessity have held that superintendency he exercised over them not to be *jure divino*, for then no man could have exempted himself from having recourse unto him. In France there are several courts of parliament from which no appeal lies, who receiving that privilege from the king, it cannot be said to be in diminution of his royalty, because that they have, he gave: but, if ever any of them should claim this as of their own right, denying the king to have at any time a power of intermeddling with them, I shall leave the objector

<sup>6</sup> [See Articles against Wolsey, 1—xxviii. in Herbert's Hist. of Hen. VIII. pp. 294, et seqq.]

<sup>7</sup> Philip Scot, Treatise of the Schism of England, p. 174, [Amsterdam, 1650.]

<sup>8</sup> [Justinian. Digest. Lib. 1.] de Of- ficio Præfector. Prætor. lex unica [fol. 17, b: ed. Paris. 1523.] Vid. Cassiodor. Vari-

arum Lib. vi. § 3, [Opp. p. 204: ed. Genev. 1637.]

<sup>9</sup> [For "quando superior dat aliqui jurisdictionem, nunquam intelligitur dare privative, sed accumulative." Bartholom. à Chasseneus, de Consuetudinibus Bur- gundie. Rubric. ii. § 1, n. 30.] [col. 437, ed. Colon. Allobrogum, 1616.]

to draw what consequence he will from it—for my part I can no other, but that they esteemed themselves very little his subjects.

40. The reader will pardon this digression, which I have the longer stood upon, to give him the more full satisfaction how appeals were first brought in, and how pursued. I shall now, in what manner the legate and archbishop prosecuted theirs; who being <sup>1</sup>both before Lucius II., 1144, the bishop of Winchester was <sup>2</sup>dismissed his legatine commission, and the pope finding with how great difficulty the ecclesiastic affairs of this kingdom could be managed by any legate without the archbishop of Canterbury—thought of a very subtle invention to conserve his own authority, and not have any crossing with that prelate, which was to create him and his successors *legati nati*; by  
 39 which, such things as he did before, and had a face of interfering with the papal plenitude, and were not so easy to divest the archbishop of exercising, he might be said to do by a legatine power. Of which it was not long before the pope made use, as is to be seen in his <sup>3</sup>Decretals; where Alexander III. resolves he could not hear *jure metropolitico* matters episcopal, that came not unto him *per appellationem*, that is, in a legal way; but *jure legationis*, he might such as were brought unto him only *per querimoniam*,—an invention <sup>4</sup>often practised afterward, and highly advantageous to the court of Rome, as what made bishops but his deputies.

41. [Harpsfield <sup>5</sup>speaks as if this honour of *legatus natus* were bestowed on Theobald by Innocentius II.; which it seems to me could not be, till the taking it away from Winchester by Lucius III., after the death of Innocentius: for in that age the church of Rome did not use <sup>6</sup>*alicujus legati ecclesiam tempore legationis indulxæ, alteri legato subjecere ratione legationis*, as must have been, had he remained a legate whilst Winchester held the honour; and Becket did, after Innocentius'

<sup>1</sup> W. Thorn, col. 1804, l. 50.

<sup>2</sup> Johan. Hagustald. A.D. 1145, col. 273, l. 61.

<sup>3</sup> De Officio Legati, Lib. i. Tit. xxx. c. 1. [In 'Corpus Juris Canonici,' Tom. II. p. 54.]

<sup>4</sup> Vid. Laurent. Bochell. Decreta Eccles. Gallican. Lib. v. p. 918. [ed.

Paris. 1609]: Concil. Tridentin. Sess. v. capp. 1, 2, etc.

<sup>5</sup> [Hist. Anglican. Ecclesiast.] Sæc. xii. c. 15, [p. 328, l. 15, ed. Duaci, 1622.]

<sup>6</sup> [Johan. Saresber. Ep. clxxviii. p. 308.]

death, deal with Cœlestinus to have that honour conferred on Theobald, archbishop of Canterbury. Neither was Thomas, the successor of Theobald, at first honoured with that title; for in the year 1164, the king endeavoured the procuring of it for the archbishop of York, and had it for himself; but so clogged as he made no use of it. After his returning it, the same author styles Becket <sup>8</sup>*jam apostolicæ sedis legatus*, which I take to have been first made known here, 1166 (though <sup>9</sup>Baronius thinks 1167), the twenty-fifth of January; so that hitherto it appears to me they were *legati nati*. Diceto says <sup>10</sup>Hubert the archbishop had, 1195, a power given him *inauditam a sæculis*; and he and <sup>11</sup>Hoveden to have the bulls importing the king's and suffragan bishops' of Canterbury petitioning for his conferring it (which he did) thereupon, notwithstanding any privilege of the archbishop of York, &c. They who would have more may see in those authors the rescripts themselves; and from hence, and the frequent bestowing it in that see, I conceive the title of *legatus natus* to have had its first rise and progress.]

But whosoever did first confer it, the matter is not great: certain it is, by it the papal authority was not a little in time increased, there being few of the clergy would question aught came from Rome, the archbishop, on whom the rest depended, himself operating but as a delegate from thence.

42. To which purpose it may not unfitly be observed, that when the papacy did first attempt the exempting some great monasteries from the jurisdiction of their ordinary, it was <sup>12</sup>*salva primatis reverentia*; or, as Malmsbury explains it, 40 *archiepiscopi tantum nutum in legitimis spectaturus*. But however thus carefully penned not to thwart with that prelate, being brought hither was taken away by Lanfranc, not permitted to be made use of, the abbot finding no other way to regain it but <sup>13</sup>*multorum preces*—[an undoubted argument appeals to Rome, as a superior, were not then taken notice of]. Yet afterward the pope without scruple exempted them

<sup>7</sup> [Gervas. Dorobern. col. 1388, ll. 50-62.]

<sup>11</sup> [Annal. Part. Post. p. 753.]

<sup>8</sup> [Ibid. col. 1400, l. 10.]

<sup>12</sup> Eadmer. p. 62, l. 34: W. Mal-

<sup>9</sup> [Annal. Eccl. Tom. XII. ad an.

mesbur. [de Gestis Pontif. Lib. III. p. 240, l. 36.]

1167, xix.]

<sup>13</sup> Eadmer. p. 62, l. 37.

<sup>10</sup> [Ymagines Histor. col. 679, l. 8.]

not only from their diocesan, but even such as were under the archbishop's nose, with all pertaining to them, were taken out of his own jurisdiction; and he who at first preserved others' rights, had those houses now at an <sup>1</sup>easy rate removed from his own. A fact of infinite advantage to the papacy, by which it had persons of learning in all parts, who depending wholly on it, defended what was done to be by one had a power of doing it; and he, who at first did solely <sup>2</sup>*agere vicies apostolicas in Anglia*, was <sup>3</sup>under no legate, permitted no bull from Rome to be made use of in England, but by his approbation, was so far now from taking them away from the bearers, as <sup>4</sup>private clerks by deputation from thence did sit his superiors in determining differences between him and others, who by strength were taken from his jurisdiction.

43. After which, popes having gained an entrance, found means to reduce the grant of *legatus natus* to no more than stood with their own liking, by inventing a new sort of legate styled *legatus a latere*, (<sup>5</sup>by reason of his near dependence on the pope's person;) who employed in matters of concernment, at his being here, the power of the former was released: <sup>6</sup>which distinction of legates seems to me to have had its birth after 1110, first applied [so far as I have noted] by any of our writers to <sup>7</sup>Johannes Anagninus Cardinalis, 1189, by Hoveden; which style yet <sup>8</sup>others who then lived do not give him<sup>9</sup>.

<sup>1</sup> Vid. Pet. Blesensis Epist. lxviii. [p. 102.]

<sup>2</sup> Eadmer. p. 58, l. 44.

<sup>3</sup> Gervas. Dorobern. [Actus Pontif. Cant.] col. 1663, l. 55.

<sup>4</sup> Vid. Bull. Johan. XXII. apud Thorn. [Chronica] col. 2041, l. 2.

<sup>5</sup> De Officio Legati, Lib. i. Tit. xxx. c. 9: Gloss. ad verb. 'Commissam' [in Decretal. Greg. IX. col. 394, ed. Taurini, 1621.]

<sup>6</sup> Vid. Gervas. Dorobern. A.D. 1188, col. 1532, l. 55; col. 1533, l. 8.

<sup>7</sup> R. de Hoveden, [Annal.] p. 661, l. 47.

<sup>8</sup> R. de Diceto, [Ymagines Hist.] col. 649, l. 42.

<sup>9</sup> [I know in the difference between Thomas Becket and Henry II., Alexander III. told the king's agent, for end-

ing those disputes, *duos a latere mitteret legatos* (Gervas. Dorobern. col. 1400, l. 51: col. 1402, l. 46): but in all these negociations here, even to their return to Rome, they are never styled *legati a latere* —an undoubted argument, that distinction was not then used in that opinion of it, after ages produced. It cannot be denied, any persons coming immediately from a prince were said to be sent *de latere ejus*; as the young king sent *duos milites a latere*, to prohibit Becket's coming forward to wait on him. One Philippus de Eleemosyna came, 1164, *missus a latere Alexandri summi pontificis et cardinalium omnium*: but he is never styled legate, as differing from others authorised by the pope. (R. de Hoveden, p. 493, l. 5.)]

Of this legate it is that <sup>10</sup>Henry Chichele in a letter, yet extant under his own hand, wrote to Henry V., that “ be inspection of lawes and cronicles was there never no legat *a latere* sent in 41 to no lond, and specially in to your rengme of Yngland, withowte grete and notable cause. And thei whan thei came, after thei had done ther legacie abiden but litul wyle, not over a yer, and summe a quarter or ij. monethes as the nedes requeryd: And yet over that he was tretyd with or he cam in to the lond, whon he schold have exercise of his power and how myche schold bee put in execution: An aventure, after hee had bee reseyved, hee whold have used it to largely to greet oppression of your peple.” [And here I cannot omit how a <sup>11</sup>late writer—finding the constant practice to have been the pope’s legate taking an oath, before his entrance here, if not attempting any thing against the king or his crown—will have it to shew the prince “ rather doubted and feared his authority, than contemned or denied the same.” Of which the first part hath much truth; for he sometimes gained an opinion of being <sup>12</sup>*occultus inimicus regni*, and the king looked on him as one came <sup>13</sup>*ad terram nostram destruendam*. But such an oath was not only a security against the abuse of all faculties whatsoever, received from Rome; but for a qualification how far they should be put in execution. And hereupon I am forced to desire him to consider the whole. The pope might send no legate but on the king’s desire: § 8. After much pursuit one is permitted: § 22. Yet on occasion stopped, and not suffered to meddle: § 20. That he might not usurp to the oppression of the subject, he was treated with ere he entered; when, where, and how, he should use his powers, and for the greater security, took an oath. If all these circumstances do not prove his authority with us to have merely depended on another’s will, and to have been understood, not as that was *jure divino*; I should be glad he would tell me what did.] At last, however, the popes brought the archbishops much under, by laying a necessity on them of receiving the pall from Rome, and at the taking of it of making profession *de fidelitate et canonica obe-*

<sup>10</sup> In Vita Hen. Chichele, p. 36, [inter Vit. Select. Virorum, Lond. 1681.]

<sup>11</sup> [Catholike Devine, Answeres to Cooke, c. xiv. § 15, p. 336.]

<sup>12</sup> [Mat. Paris, A. D. 1240, p. 524, l. 43.]

<sup>13</sup> [Gervas. Dorobern, col. 1552, l. 53.]

*dientia*; that is, by obliging them by oath to defend *regalia Sancti Petri*. Of which, because I find the introducing not much touched by our writers [yet], a great means to advance this foreign power, it will not be amiss to say somewhat; and first of the pall.

44. The *pallium*, from whence our English word “pall,” was a garment with which the professors of arts, as grammar, rhetoric, music, might clothe themselves, (as it seems to me by <sup>1</sup>Tertullian they did); yet was held most proper for such as professed philosophy: and therefore when a <sup>2</sup>begging fellow came to a noble Roman *palliatus et crinitus*, being asked what he was, the man half angry replied he was a philosopher, *et mirari [quoque addit] cur querendum putasset quod videreret*; to which the gentleman returned, [*Video*] *barbam et pallium; philosophum nondum video*. From whence I gather, it was for the most peculiar to them. So <sup>3</sup>Eusebius shews on Heraclas, *φιλόσοφον ἀναλαβών σχῆμα*, “taking the habit of a philosopher,” notwithstanding his being a Christian, retained it: and at the martyrdom of <sup>4</sup>Porphyrius, a disciple of Pamphilus, he

<sup>42</sup> describes that *φιλόσοφον σχῆμα* to be a short cloke or pall covering the shoulders.

45. But it seems the primitive Christians in wearing of it did attribute some sanctity to the garment; for <sup>5</sup>*grande pallii beneficium est* (saith Tertullian) *sub cuius recognitatu improbi mores vel erubescunt*: whereupon the <sup>6</sup>council of Gangra, not an hundred years after, pronounced him *anathema* used the *pallium quasi per hoc habere se justitiam credens*, &c. Now from the danger of superstition of the one side, and the being especially worn by philosophers of the other, I am apt to think it became in the end proper only to some bishops, who might challenge it as learned philosophers, yet not at all likely to attribute more to the robe than reasonable; and in time, either by collation of emperors, or otherwise, appropriated to some particular churches, who having that mark were after the seats of archbishops for the most part. For though <sup>7</sup>Alcuinus be of

<sup>1</sup> *De Pallio*, c. 6.

<sup>2</sup> *Aul. Gellius*, *Noct. Attic. Lib. ix.*

<sup>c.</sup> 2.

<sup>3</sup> *Hist Eccl. Lib. vi. c. 19*, [p. 418.]

<sup>4</sup> [ *De Martyribus Palæstinæ*, c. xi. § 15, apud *Hist. Eccl. Vol. II.* p. 629.]

<sup>5</sup> *Tertullian, de Pallio*, cap. 6.

<sup>6</sup> *Concil. Gangrense*, can. xii. [Concil. ed. Labb. Tom. II. 422.]

<sup>7</sup> “*Pallium est nihil aliud, nisi discretio inter archiepiscopum et ejus suffraganeos.*” *De Divinis Officiis*, c. 39,

opinion the pall is nothing but a distinction between an archbishop and his suffragans: yet, under favour, I conceive that must be taken of the acceptation of the word in the time the author of that tract lived, [which I do not yet see how to attribute to Alcuinus the Englishman]—not as used in St Gregory's days, who gives <sup>8</sup>Augustine, at the bestowing the pall upon him, the title of archbishop. [The first council of Matiscon, about 582, ordained *ut <sup>9</sup>archiepiscopus sine pallio missas dicere non præsumat*: but this, however mandatory to an archbishop, did not prohibit the use of it to a bishop; as is plain by the example of St Gregory, who seventeen years after conferred it on <sup>10</sup>Syagrius, bishop of Austun in Burgundy,] which town, notwithstanding the gift by that father, was never reputed to have other than an episcopal chair, and suffragan to the archbishop of Lyons to this day. So that certainly, at first, all that had the pall were not *eo nomine* archbishops. [Afterward the emperor—who primarily, no question, had himself a good part in the disposing of it, (of which in the next)—relinquished it wholly to the pope, and then the names and offices of bishop and archbishop grew of a wider distance in the church, and this garment in time became only proper to archbishops.]

46. The deed is yet extant by which Valentinian bestowed it on the church of Ravenna, about the year 430. I know <sup>11</sup>some, who find not how to deny it, hold this an honourable vestment, such as emperors themselves wore; which opinion <sup>43</sup>  
<sup>12</sup>Baronius justly confutes, and rather thinks it forged: yet he—  
<sup>13</sup>citing out of <sup>14</sup>Liberatus, that Anthimus expelled the church of Constantinople, *pallium quod habuit, imperatoribus reddidit, et discessit*,—gives no gloss how he could return to the emperor his pall and depart, if he had nothing to do with it: and it is manifest, in Gregory the Great's days, that church did not

[apud Alcuini Opp. Vol. III. p. 496, ed. Ratisbon. 1777.]

<sup>8</sup> S. Gregor. Epist. Lib. xii. c. 15, Indict. vii.

<sup>9</sup> [Concil. Matiscon. i. can. vi.] [Concil. ed. Labb. Tom. V. 968.]

<sup>10</sup> S. Gregor. Epist. Lib. vii. c. 112, Indict. ii.

<sup>11</sup> Hieron. Rubeus, Hist. Ravennat.

[Lib. ii. p. 81, ed. Venet. 1572]: Italia Sacra, Tom. II. coll. 331, 332, [ed. Rom. 1647.]

<sup>12</sup> Annal. Eccl. Tom. V. ad an. 432, xciii.

<sup>13</sup> Ibid. Tom. VII. ad an. 536, xvii.

<sup>14</sup> Liberatus Diaconus in Breviar. c. 22.

only prescribe for the use of the pall, but for doing it contrary to the will and opinion of that pope. And the same doctor elsewhere <sup>1</sup> saith, he had dealt *apud piissimos dominos, the emperors*, to send him Anastasius, *concesso usu pallii*: and afterward being desired by Brunechilda to grant it to Syagrius, (of whom before) he shews his readiness, <sup>2</sup>*propter quod et serenissimi domini imperatoris... prona voluntas est, et concedi haec omnino desiderat*. So that certainly, at the beginning, if princes did not bestow it, yet it was not done against their wills; which after-times did in Europe solely appropriate to the pope: who yet gave it not against their liking; as <sup>3</sup>Lucius II., sending it to the bishop of Winchester, who yet never made use of it, teacheth us.

47. But what this pall imported, or what the receiver had of advantage by it, writers I think do not always agree <sup>4</sup>Isidorus Pelusiota, who writ about the year 430, is of opinion, the bishop, as a type of Christ, wears that cloke of wool, to shew himself imitator of the great Shepherd that will bear the strayed sheep on his shoulders. <sup>5</sup>St Gregory says, it signifies humility, justice, &c. I have shewed before Alcuinus his opinion of it, [or who else writ the book *de Divinis Officiis*]. But whatsoever signification it was at first thought to carry, certainly the necessity of fetching it from Rome was not so urgent, as in these later times the papal interest made it esteemed. We do not read that ever Laurentius or Mellitus received thence the pall; yet no man doubts of their being as lawful archbishops as Augustine was. <sup>6</sup>Giraldus Cambrensis and

44 Hoveden agree, the bishops of St David's in Wales did use the pall, till Samson, about the time of the Saxons, flying from an infection, carried it with him; yet neither of them report him to have fetched it from Rome: nor after the wanting it, did the rest of the bishops there either refuse his consecration, deny obedience to the see, or make profession to any other, before Henry I. induced them by force. But to come to the Saxons: after Paulinus, there are five in the catalogue of York expressly

<sup>1</sup> Epist. Lib. i. c. 27, Indict. ix.

[ed. Paris. 1638] : Baron. Tom. II. ad

<sup>2</sup> Ibid. Lib. vii. c. 5, Indict. i. [See  
also Baronius, Tom. VII. ad an. 544, xii.]

an. 216, xv. : Tom. VII. ad an. 553, vii.

<sup>3</sup> R. de Diceto, [Abbreviat. Chron.]

<sup>5</sup> Epist. Lib. viii. c. 129, Indict. ii.

A.D. 1142, col. 508.

<sup>6</sup> Itinerar. Cambriæ, Lib. ix. c. 1,

<sup>4</sup> Isidor. Pelusiot. Lib. i. Ep. 136,

[p. 855, l. 55.] R. de Hoveden, [Annal.]

A.D. 1199, p. 798, l. 9, etc.

<sup>7</sup>said to have wanted it—amongst which Wilfred, that <sup>8</sup>ruled all the north as his bishopric—yet are reputed both archbishops and saints; and of others in that series it will not be easy to prove they ever used it. Albertus the eighth bishop, about 767, had it not till the seventh year <sup>9</sup>accepti episcopatus: nor <sup>10</sup>Adilbaldus or Ethelbaldus the fourteenth, A.D. 895, till the fourth year *postquam acceperat episcopatum*. An undoubted argument, that canon of Pelagius, recorded both by <sup>11</sup>Ivo and <sup>12</sup>Gratian, that no metropolitan should defer above three months sending for it to Rome, was never received in this church. <sup>13</sup>Gregory the Great says, it ought not to be given, *nisi fortiter postulanti*: and the same <sup>14</sup>father with a council at Rome, A.D. 595, decreed, *pro pallio omnino aliquid dare prohibeo*. So that in those times the one side perhaps did not much urge the taking of it, nor the other greatly seek for a thing brought small advantage, and was so far to be fetched. [St Bernard styles Celsus <sup>15</sup>archbishop, who instituted in Ireland another metropolitical chair; says Malachias was <sup>16</sup>*pontifex et metropolitamus totius Hibernie*; yet neither of them lived to see a pall bestowed on that island, nor himself perhaps long enough to take notice of it. Neither was the want of it any hindrance of Malachias' disposing all things there <sup>17</sup>*tanquam ex apostolis unus*. St Bernard indeed speaks as if he had some scruples in himself, that he did not <sup>18</sup>*satis tute actitare, absque sedis apostolice auctoritate*—yet the prodigious signs (if true) gave testimony sufficient of God's concurring in his admission to that honour—and in the year 1137, going to Rome for obtaining two palls, <sup>19</sup>Innocentius II., though he confirmed the metropolis Celsus had erected, for the palls *oportet, ait summus pontifex, solennius agi*. *Convocatis episcopis et clericis et majoribus terræ celebratis generale concilium, et sic conniventia et communi voto universorum per honestas pernas requiretis pallium, et*

<sup>7</sup> Thom. Stubbs, *Actus Pontif. Eboracens.* col. 1697, l. 2.

<sup>8</sup> Bed. *Hist. Eccl. Lib. v. c. 20*: vid. *Lib. iv. c. 12*.

<sup>9</sup> Simeon. *Dunelm. ep. ad Hugonem*, col. 78, l. 51: Thom. Stubbs, *ubi supra*, l. 15.

<sup>10</sup> Simeon. *Dunelm. col. 78, l. 25*: *Thom. Stubbs, col. 1698, l. 57*.

<sup>11</sup> Ivo, *Decretum, Part. v. c. 136*, [fol. 168, b: ed. Lovan. 1561.]

<sup>12</sup> *Decret. Part. i. Distinct. c. c. 1*, [*Corpus Juris Canon.* Vol. I. p. 122.]

<sup>13</sup> *Epist. Lib. vii. c. 5, Indict. i.*

<sup>14</sup> *Ibid. Lib. iv. c. 88, Indict. xiii.*

<sup>15</sup> [*In Vita S. Malachiae: apud Bernard. Opp. col. 1937, A.*]

<sup>16</sup> [*Ibid. col. 1939, G.*]

<sup>17</sup> [*Ibid. col. 1941, D.*]

<sup>18</sup> [*Ibid.*]

<sup>19</sup> [*Ibid. col. 1943, H.*]

*dabitur vobis.* So that it seems the pall was then esteemed a badge or livery bestowed on such as independently did desire to live under the church of Rome; not that it did add aught to the episcopal function, or as if they were less perfect archbishops, whilst they were destitute of that plenitude. For I do not know any writer of those times held them less proper for any episcopal act whatsoever, only it seems they were not in such subjection to the Roman patriarch before it, as that did testify them to be.]

48. After the court of Rome began to raise to itself a revenue from other churches, this *pallium*, that was no other than a distinctive ornament, not to be paid for, began to be set [with us] at so immense a rate, that <sup>1</sup>Canutus going to Rome, 1031, did mediate with John XIX., that it might be more easy to his prelates: in which, though he had a favourable answer, yet in Henry I. his time it was so much, the archbishop of York could not pay the money, without an <sup>2</sup>heavy debt. <sup>3</sup>Matthew

45 Paris doth intimate as if Walter Gray, translated from Worcester to that see, 1215, had not his pall at less than ten thousand pounds: *Accepto pallio, saith he, episcopus memoratus rediit in Angliam, obligatus in curia Romana de decem millibus librarum estirlingorum*; which was about the silver of thirty thousand pounds now, coin being then after the rate of twenty-pence the ounce. But after-times, according to the bishop <sup>4</sup>of Llandaff, reduced it to the certainty, that each bishop paid five thousand ducats for it, every one of the value of four shillings and six-pence, our money: which yet I do not see how to make agree with the <sup>5</sup>*Antiquitates Brit. Ecclesiae*, that speaks only of nine hundred *aureos ducatos* paid by Cranmer.

49. But to omit the gain came by the garment, that certainly was a means of drawing a great obligation from all archbishops to the papacy: for [about 1102] a new oath *de fidelitate et canonica obedientia* was devised, to be tendered every archbishop at the reception of it. For the more full understanding of which, we are to know, William I., after he had settled the nation in quiet, wholly possessed of it, would not in

<sup>1</sup> Florent. Wigorn. A.D. 1031, [p. 620]: Ingulph. Hist. p. 893, l. 56: Malmesbur. [de Gestis Regum] p. 74, l. 44.

<sup>2</sup> "Graviter mutuatum." Eadmer. p. 98, l. 30.

<sup>3</sup> Mat. Paris, p. 274, l. 4.

<sup>4</sup> [Bp. Godwin, de Præsulibus An-

glie, Catalog. sub fin.]

<sup>5</sup> Antiq. Britan. p. 327, l. 48, ed. Hanov. 1605.

any <sup>6</sup>kind acknowledge a farther obedience to Rome than his predecessors had; but maintained the rights of the kingdom against the liking of that court in many particulars, barring all men for taking any for pope, but whom he designed; insomuch as after <sup>7</sup>Gregory VII., 1084 till 1095, (about eleven years) there was no pope acknowledged in England; denying any to receive letters from thence, but acquainting him with them, and many more (of which elsewhere)—all which being exercised by him, were never questioned during his time, nor while Lanfranc lived after him, (though he hath been ever reputed an holy man). But Anselm succeeding in his seat, great contentions arose between him and William II., the <sup>8</sup>king with the nobility pressing him, as the usage of the realm, not to <sup>46</sup>depend on Rome as of necessity; he, on the other side, <sup>9</sup>declaring all such customs to be contrary to divinity, right, &c., chose rather to live an exile all that prince's time, than any way submit to those customs, had been practised, never disputed or questioned by any archbishop here before.

50. But, that king being soon after taken away, and Paschalis II. succeeding almost at the same time—considering, as it seems, by what weak bands foreign bishops were tied to the papacy, how easy it was for them to fall from it; that <sup>10</sup>Gregory VII. was not satisfied even with Lanfranc's carriage *in episcopali honore positus*, who restrained his obedience to *canonum præcepta*; that Anselm alone had opposed the whole body of the kingdom; that every prelate might be neither of his temper or opinions—framed an oath, the effect of which you may see in Diceto<sup>11</sup>, A.D. 1191, and in Matthew Paris and others, the <sup>12</sup>full which every archbishop at the reception of

<sup>6</sup> Vid. Baron. Annal. Tom. XI. ad an. 1079, xxi. xxv. Lanfranc. Epist. vii. p. 304.

<sup>7</sup> Eadmer. p. 25, l. 40: vid. Lanfranc. Epist. lix. p. 329, § 'non laudo.'

<sup>8</sup> Eadmer. pp. 38, 39.

<sup>9</sup> Eadmer. p. 40, l. 7; l. 31, etc.

<sup>10</sup> Lanfranc. Epist. viii. p. 305.

<sup>11</sup> [Ymagines Hist.] col. 663, l. 6, etc.

<sup>12</sup> Note, where you read in the 'Lives of the Abbots,' (p. 140, l. 22) *regalem*, and in his 'Historia Major' (p. 414, l. 22) *regalis*, both should be *regalia*: for so we find it at the end of the council of

Vienna [Labbe, Tom. XI. Part. ii. 1566], agreeing with an old copy of that oath I have seen in the exchequer, which the Decretals, 'de jure jurando,' c. 4, [Corpus Juris Canonici, Vol. II. p. 107] read thus: "Papatum sanctæ Romanæ ecclesiæ et regulas sanctorum patrum adjutor ero," etc. But Odoricus Raynaldus [Annales Eccl. Tom. XIII. ad an. 1233, § 65] citing, out of the records of the Vatican, the oath St Edmund archbishop of Canterbury took, reads it rightly, *regalia*.

the pall was to render. At the tendering this, one in Sicily made a scruple of taking it, as that *nec ab apostolis post Dominum, nec in conciliis inveniri posse statutum*; the like did some <sup>1</sup> in Polonia: to whom the pope answers, (as in cap. <sup>2</sup> *Significasti*,) objurgatorily, *quasi Romanae ecclesiae legem concilia ulla praefixerint*. And going on with the design, whereas at the assuming of this pall by Anselm, 1095, it was no otherwise than thus, <sup>3</sup> *Pallium super altare delatum ab Anselmo assumptum est, atque ab omnibus pro reverentia Sancti Petri suppliciter deosculatum, &c.*—at the taking of it by Ralph, 1115, his immediate successor, we find it with this addition: <sup>4</sup> *Sicque delatum super altare Salvatoris pallium est, et a pontifice inde susceptum, 'facta prius Romano pontifici, de fidelitate et canonica obedientia, professione.'* *Deinde pro reverentia beati Petri ab omnibus deosculatur, &c.* Which profession being never met with as made by any archbishop of Canterbury before, but frequently after by such as were his near successors, as <sup>5</sup> Thomas Becket, Baldwin, &c., we must conclude him to have been the first from whom it hath ever been required. I know <sup>6</sup> Bellarmine interprets a bishop's returning out of schism, 602, and voluntarily professing to live in communion with the pope, to be a swearing of obedience to that chair; but certain there is a difference between obeying and living in communion (of which see cap. 7, § 4); between an oath enforced, and one voluntarily taken. After this, as ways to augment the court, many privileges were annexed to it; <sup>7</sup> as that none before his receiving that ornament might convocate councils, prepare chrism, dedicate churches, ordain clerks, consecrate bishops, that being <sup>8</sup> *pontificalis officii plenitudo*, till he had it, none to be styled an archbishop—things added after men's holding a necessity of seeking it, did so much contribute to the papal advantage, both in point of honour and profit. For it is manifest Lanfranc, Anselm, and Ralph,

<sup>1</sup> Baron. Annal. Tom. XI. ad an. 1102, vi. vii. viii.

<sup>2</sup> De Electione, Lib. I. Tit. vi. c. 4, [Corpus Juris Canon. Vol. II. p. 14.]

<sup>3</sup> Eadmer. p. 34, l. 33.

<sup>4</sup> Ibid. p. 113, l. 43, etc.

<sup>5</sup> R. de Diceto, col. 534, l. 8: Gervas. Dorobern. col. 1307, l. 2.

<sup>6</sup> De Romano Pontifice, Lib. III. c.

11, [in Disputat. Tom. I. p. 193, b.]

[Gregor. Epist. Lib. x. c. 31, Indict. v.]

<sup>7</sup> De Electione, c. 28, § 1, [Corpus Juris Canonici, Vol. II. p. 21.]

<sup>8</sup> De auctoritate et usu Pallii, c. 3, [Ibid. p. 29]: Vid. Concil. Lateranense iv. [Labbe, Tom. XI. Part. i. 149.]

did dedicate <sup>9</sup>churches, <sup>10</sup>consecrate bishops and abbots, were called <sup>11</sup>archbishops, whilst they wanted it.

51. Now the ice broken, this oath (at first required only of archbishops when they took the pall) was by <sup>12</sup>Gregory IX., *mutatis mutandis*, imposed on abbots and bishops. About 1235, came into England <sup>13</sup>*occulta [et] clarisa sub bulla*, the <sup>14</sup>like to which had not been seen, was proffered to John XXIII., abbot of St Alban's, unacquainted with it, when he could not <sup>15</sup>*ab ista obligatione resilire*; who is therefore noted, that <sup>16</sup>*primo invitatus et dolens Romanorum jugum subiit servitutis*, and that <sup>17</sup>*prae omnibus Romanorum oppressionibus novis et inauditis caput 48 molestari, &c.* The thing I find of greatest exception is, the obligation enjoining them to visit Rome, which being in pursuance of the twenty-sixth chapter of the council of Lateran, held only twenty years before, is censured <sup>18</sup>*damnum, gravamen, praejudicium, injuria, jactura*, as that which altered the nature of the church, which had been from the foundation *libera et ingenua*, and was thus brought to serve the ends of the court of Rome. Truly after this I cannot see how there can be said to have been a free papal council in Europe, when such as it consists of (being, for the most, bishops and abbots) come with so high an obligation as an oath to defend the usages of Rome, under the title of *regalia Sancti Petri*. In pursuance of which <sup>19</sup>the council of Trent did expressly charge all patriarchs, archbishops, bishops, and other, who in future should meet in provincial synods, that *veram obedientiam summo Romano pontifici spondeant, et profiteantur*. I wish it had expressed what that had been, [and wherein it did consist].

52. To return to that I was treating of. This visiting the Roman court, however much pressed on this monastery of St. Alban's, yet was ever excused till, 1290, John III. and twenty-fifth abbot was forced to go thither for his confirmation:

<sup>9</sup> Eadmer. p. 22, l. 19.

<sup>10</sup> Ibid. p. 6, l. 46: p. 23, l. 31: p. 111, ll. 6, 18, 32.

<sup>11</sup> Ibid. p. 23, l. 42: p. 111, l. 32, et passim apud *Historicos*.

<sup>12</sup> *De Jure Jurando*, Lib. 11. Tit. xxiv. c. 4, [Corpus Juris Canonici, Tom. II. p. 107.]

<sup>13</sup> Mat. Paris, *Vit. S. Albani Abbat.*

p. 140, l. 31.

<sup>14</sup> Mat. Paris, *Hist. Major*, p. 410, l. 40.

<sup>15</sup> *Vit. Abbat.* p. 140, l. 32.

<sup>16</sup> Ibid. p. 141, l. 49.

<sup>17</sup> Ibid. p. 142, l. 1.

<sup>18</sup> Mat. Paris, *Vit. Abbat.* p. 133, l. 23: p. 141, ll. 52, 56.

<sup>19</sup> *Sess. xxv. [de Reformatione] c. 2.*

but because the book is not printed, I will give you my <sup>1</sup> author's own words : *Johannes de Berkamsted, vir religiosus et honestæ conversationis : Hic in crastino conceptionis beata et gloriosæ virginis Mariæ, scilicet quinto idus Decembbris, anno Domini MCC. nonagesimo, per viam cōpromissi de gremio ecclesiae concorditer electus, ad curiam Romanam primus omnium abbatum hujus ecclesiae, pro confirmatione electionis suæ obtinenda, personaliter accessit, ibique confirmatus est a summo pontifice Nicholao ; et a venerabili L. Ostiensi episcopo et cardinali apud urbem veterem munus accepit benedictionis ; et*

49 *sic data maxima pecunia papæ, et cardinalibus, et aliis de curia, quam de mercatoribus papæ duris conditionibus ex mutuo recepit, ab illa insatiabili curia evasit, expletisque negotiis domum redire festinavit, &c.* By which we may see who of this house went on this occasion first thither, and why it was so earnestly urged from thence. As for the monastery of St Augustine, by reason of the often contentions with the archbishop, the monks there were much more prone to yield obedience to Rome, who maintained them for the most against him, than these other were : yet the first of them I find to have <sup>2</sup>took this oath was Roger II., elected abbot 1253. For though the <sup>3</sup>benediction of Robertus de Bello, 1224, were at Rome, where he gained the abbacy ; yet there being no mention of any oath presented to him then, we must think it came in afterwards. But for the fuller understanding how this visiting the Roman church came in, the reader will give me leave a little to digress.

53. Christians in all ages have esteemed it a point of singular piety and devotion, for any ghostly father or doctor to have a care of those to whom they have the relation of being a spiritual superior, either by planting christian religion amongst them, reducing them out of error, or otherwise some engagement on them. Saint Paul sent for the elders of Ephesus to come unto him at Miletus, from whom they received those wholesome instructions we read in the <sup>4</sup>Acts of the Apostles ; and according to this example there are divers exhortations in the writings and

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<sup>1</sup> *Vitæ Abbatum S. Albani MS. in Johanne III. Abbat. xxv.*      1. 23.  
<sup>2</sup> *W. Thorn, [Chronica] col. 1899,*      <sup>3</sup> *Ibid. col. 1880, l. 3.*  
<sup>4</sup> *Acts xx. 17—35.*

epistles of the fathers. Before the year 517, a <sup>5</sup>council held at Tarragona in Spain did ordain, that every bishop, *impletis duobus mensibus, se metropolitani sui repræsentet aspectibus, ut ab illo monitis ecclesiasticis instructus, plenius quod obser- vare debeat recognoscat. Quod si forte hæc implere neglexerit, in synodo increpatus a fratribus corrigatur.* Agreeing to which, <sup>6</sup>Justinian, in the year 541, did establish by law, that for the better observance of the ecclesiastic rules, every arch-bishop, patriarch, and metropolitan, *sanctissimos episcopos sub se constitutos in eadem provincia semel aut secundo per singulos annos ad se convocare.* And pope <sup>7</sup>Zachary, A.D. 743, in a council at Rome, *omnes episcopi qui hujus apostolicæ sedis ordinationi subjacebunt, qui propinqui sunt, annue idibus mensis Maii sanctorum principis apostolorum Petri et Pauli liminibus presententur, omni occasione seposita, &c.* After which Charles the Great did by law ordain, <sup>8</sup>ut unusquisque presbyter per singulos annos episcopo suo rationem ministerii sui reddat, tam de fide catholica, quam de baptismo, atque de omni ordine ministerii sui.

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54. About which time Boniface, an Englishman, the pope's legate in Germany, and archbishop of Mentz, in a council held in Germany, (the decrees whereof he sent to Cuthbert, then in the seat of Canterbury,) <sup>9</sup>declaring how great the care of the metropolitan ought to be of those under him, shews every presbyter should once a year in Lent give an account to his bishop, who was to instruct him, and with such things as he could not correct himself, to acquaint the archbishop in a synod: *Ut si sacerdotes vel plebes a lege Dei deviâsse viderim, et corrigerem non potuerim, fideliter semper sedi apostolicæ et vicario Sancti Petri ad emendandum indicaverim. Sic enim, ni fallor, omnes episcopi debent metropolitano, et ipse Romano pontifici, si quid de corrigenis populis apud eos impossibile est, notum facere, et sic alieni fient a sanguine animarum perditarum.* Cuthbert, according to this advice, doth appoint

<sup>5</sup> Concil. Tarragonense, c. 5, [Concil. ed. Labb. Tom. IV. 1564.]

<sup>6</sup> Novell. Constit. cxxiii. c. 10. [This passage is variously read in the different editions of the Novels. On the practice referred to, see Bingham, Book II. chap. xvi. § 17.]

<sup>7</sup> Baron. Annal. Tom. IX. ad an. 743, xix.

<sup>8</sup> Caroli Magni et Ludovici Pii Capitula, Lib. vii. c. 108, [in 'Codex Legum Antiquarum,' p. 1067.]

<sup>9</sup> Spelman. Concil. [Tom. I.] p. 238.

the proceedings of the bishop to be to the archbishop, in the same words he had received it from Boniface; but <sup>1</sup> passeth no farther to the pope: an undoubted argument, it was not then usual in England. I have touched before, the Conqueror did suffer no other correspondency with Rome than what he liked; Paschalis II. quarrelled with Henry <sup>2</sup>I. that *nullus inde clamor*, 51 to prevent which, this visiting Rome was at the very first inserted into the oath of an archbishop, who being head of the province, all the rest might have the same dependence.

55. But because this did not reach such houses and persons as were exempt from the jurisdiction of the ordinary, acknowledging no superior but the pope; the council of Lateran under Innocentius III., 1215, <sup>3</sup> provided, such as pertained immediately to his rule should present themselves before him for confirmation, *si commode potest fieri*, which was here disliked. But this council speaking not home, in that it tolerated the sending *'personas idoneas, per quas diligens inquisitio super electionis processu et electis possit haberi, &c.'*, to make the excuse—and being itself (as I shall shew hereafter,) not much regarded till Gregory IX., nephew to Innocentius, inserted it for the most into the Decretals, and framed, as I have said, an oath too, for the stricter obligation unto him—it was again urged by Alexander IV. *ut quilibet, qui in abbatem exemptum extunc eligeretur, Romanam curiam adiret confirmandus et benedicendus*: which the same author styles <sup>5</sup>*statutum enorme*, and [a little after] *cruentissimum*<sup>6</sup>. And whereas some, finding the burden of running to Rome, had obtained as a privilege from thence, <sup>7</sup>*ut non teneantur sedem apostolicam usque ad certa tempora visitare, contra formam praestiti juramenti; ex quo illud evenit inconveniens, quod apostolicae sedis rarius visitatur, in derogationem reverentiae quae ab omnibus debetur eidem, &c.*; the same pope therefore revokes all manner of such concessions to whomsoever formerly granted. In which year, or perhaps 1258, Simon, (elected abbot of St Edmundsbury), confirmed by Alexander IV. the twenty-second of October, is

<sup>1</sup> Cf. Spelman. Concil. ubi supra,  
§ 'Ut episcopi': et p. 251, § 25.

<sup>2</sup> Eadmer. p. 113, l. 2.

<sup>3</sup> Concil. Lateran. iv. c. 26, [Labbe, Tom. XI. Part i. 177.]

<sup>4</sup> Ubi supra.

<sup>5</sup> Mat. Paris, [Hist. Major] A. D. 1257, p. 951, l. 43.

<sup>6</sup> Ibid. p. 956, l. 7.

<sup>7</sup> Odoric. Raynald. Annales Eccl. Tom. XIV. ad an. 1257, § 50.

<sup>8</sup> noted to have been *primus exemptorum in Anglia ad curiam Romanam pro sua confirmatione vocatus.*

56. Yet the court of Rome, however thus earnest at first, (either perceiving it ill relished abroad, and that forcing sudden mutations in religion not to be of so good consequence), in her prosecution was more moderate. <sup>9</sup> On Roger, the twenty-fourth abbot of St Alban's, 1263, I do not find it at all pressed; his successor John, the twenty-fifth, I have shewed, was the first went thither for it. So likewise <sup>10</sup> Philip, abbot of Westminster, 1258, obtained the favour to stay at home, and Richard Ware, his successor, fetched his consecration first thence. But after the court was fully in possession of what turned so much to her advantage, an excuse was <sup>11</sup> hardlier admitted; and if any were, it was by paying a good round sum for it. It is remembered, Michael, abbot of St Augustine's, elected 1375, did give *papæ et cardinalibus ut possit benedici in Anglia £183. 2s. 6d.*; and accordingly some other. The papacy [by these steps gained upon the English church, and] having by these ways abated the power of the archbishop, found it easy, his let removed, to bring the rest of the clergy wholly to depend upon it, by raising whom it liked to oppose that prelate, who were bound to maintain the papal authority which supported them in what they did, and wringing the investitures (so far as lay in their power) out of the hands of princes, to interest the pope and his party in several particulars, under the notion of being matters ecclesiastical. By which he brought the elections of bishops solely to the convent, excluding both king and others, and became as patron of most spiritual promotions in England: which <sup>12</sup> form he yet laboured in the end to break too, by reducing all to his own gift. For the understanding of which, as not impertinent to that I treat of, it will be necessary to look a little higher.

57. When any place became destitute of a bishop, it seems to me at first, in the primitive church, the lay as well as the clergy did concur in nominating who were to succeed in the

<sup>8</sup> *Monasticon Anglicanum* [Vol. I.] p. 296, col. 1.

<sup>9</sup> *Vitæ Abbat. MS.* [See above, note 1, p. 66.]

<sup>10</sup> *Mat. Paris, Hist. Major.* p. 972, l. 51: [“vix tandem . . . data non modica

pecuniae quantitate.”]

<sup>11</sup> *W. Thorn, [Chronica]* col. 2185, et seqq.

<sup>12</sup> *Lettres du Cardinal D'Ossat, ccxcvi. p. 686: [à Paris, 1627.]*

charge ; that he who was to have the inspection of all, might 53 not be brought into it with the repugnancy of any. And this custom was so general, as <sup>1</sup>St Cyprian and thirty-six bishops more, meeting in council about the year 255, writing to certain in Spain, spake as if it did descend *de divina auctoritate*. It is not to be doubted but this course gave sometime opportunity to ambitious and contentious spirits (as <sup>2</sup>St Augustine calls them) of troubling the church's peace : and therefore <sup>3</sup>the council of Laodicea, before the year 360, did appoint the elections to priesthood not to be <sup>4</sup>by multitudes ; and divers holy bishops, desiring peace might continue after them in their flock, were careful, or ever they died, to know the person was to succeed in their chair. Severus, bishop of <sup>5</sup>Mela in Africa, had expressed to the clergy only, whom he thought fit to have been admitted after him to his episcopacy. This was likely to have bred some stir, in respect the people were not acquainted with it, had not <sup>6</sup>St Augustine by his pains and wisdom allayed the dispute : to avoid which, that good man nominated one Eradius for his successor, whom the people with loud acclamations approved.

58. This concurrence or joining of the lay with the clergy (that *qui præfuturus est omnibus ab omnibus eligatur*, as <sup>7</sup>Leo speaks) in choice of bishops, I do no way question to have continued in the church till after Charles the Great, in whose Capitulars we find, *ut <sup>8</sup>episcopi per electionem cleri et populi [secundum statuta etc.] elegantur* ; and to have been sent hither by Gregory the Great, who in <sup>9</sup>his Epistles seems to make mention of it, as we do find <sup>10</sup>steps of it in our own historians. [But generally popular elections do carry so huge disorders, the contentions moved in them so great, the ambition of the standers so notorious, the partiality of the people so scandalous—sometimes preferring persons of no parts before

<sup>1</sup> Cyprian. Epist. lxviii. c. 4 : ed. Pamelii.

<sup>2</sup> Epist. cx. [Opp. Tom. II. p. 332, D.]

<sup>3</sup> Concil. Laodicen. c. 13, [Labbe, Tom. I. 1498.]

<sup>4</sup> 'Non est permittendum turbis electionem eorum facere.' Distinct. lxiii. c.

6 : [Apud Corpus Juris Canonici, Vol. I. p. 83.]

<sup>5</sup> Milevis.

<sup>6</sup> Epist. cx. ubi supra.

<sup>7</sup> Leo, Epist. Decret. lxxxix. c. 6, [Opp. p. 160, A.]

<sup>8</sup> Caroli Magni Capitula, Lib. I. c. 84.

<sup>9</sup> Lib. II. c. 26, Indict. x. : c. 61, 65, Indict. xi.

<sup>10</sup> Vid. Continuat. ad Florent. Wigorn. A. D. 1128, p. 663 : A. D. 1139, p. 671.

others of great worth and learning—as that manner upon great considerations hath in divers places been altered.] And certainly with us, however there might be some formalities of the people, the chief of elections here ever depended on the prince; as may be gathered by that speech of Wolstan to the Confessor's tomb,<sup>11</sup> that he had compelled him to take the pastoral staff. And Edward III. wrote to Clement VI.: <sup>12</sup>*Cathedrales... 54 ecclesias progenitores nostri dudum singulis vacationibus earundem personis idoneis jure suo regio libere conferebant, et postmodum, ad rogatum et ad instantiam dictae sedis, sub certis modis et conditionibus concesserunt, quod electiones fuerent in dictis ecclesiis per capitula earundem, etc.* So likewise in the parliament, 50° Edward III., the commons shew, the king and great men were formerly in peaceable possession of giving preferments in holy church. But I will give the words themselves, because I will not err in the translation: <sup>13</sup>*Les roys et autres grandes... feurent en peisible possession de doner les esglises et les benefices de saint esglise; come fist le roy saint Edward, qui dona l'evesche de Wircestre a saint Wolston. Et puis, par devotion des roys fuit grante, et par la court de Rome conferme, que les cathedralx esglises averoient frank election de lour prelatz, solonc la ley [de] Dieu et de saint esglise ent ordeigne, perpetuellement a durer.* And a little <sup>14</sup>after: *Les roys d'Engleterre soloient doner evesches et autres grantz dignitez trestouz, come il fait a jour de huy esglises parochiels, et le pape ne se medlast de doner null benefice deinz le royalme tan que deinz brief temps passe.*

59. And this to have been likewise the custom in France, the complaint of the French ambassador to Innocentius IV. assures us: <sup>15</sup>*Non est multum temporis (saith he) quod reges Francorum conferebant omnes episcopatus in camera sua, &c.*; and our writers do wholly look upon the placing Lanfranc in Canterbury, as <sup>16</sup>the king's act, though it were not <sup>17</sup>without the

<sup>11</sup> Ailred. Rievall. de Vita et Miraculis Edw. Confess. col. 406, l. 37.

<sup>12</sup> Epist. Edw. III. apud Thom. Walsingham, A. D. 1343, p. 162, l. 25, etc.

<sup>13</sup> Rotul. Parl. 50° Edw. III. § 94.

<sup>14</sup> Ibid. § 110.

<sup>15</sup> Additamenta Mat. Paris. MS. in Biblioth. Cotton. [Nero, D, 1: fol. 128, a, col. 1. There are several different sets of pagings: this reference is according to

the one, which from its distinctness seems most recent.]

<sup>16</sup> "A Willielmo Lanfrancus electus est." W. Malmesbur. [de Gestis Pontif. Lib. I. p. 205, l. 19]: "Rex (Lanfrancum) archiepiscopum constituit Cant. Eccl." Florentius Wigorn. A.D. 1070, p. 637: Simeon. Dunelm. col. 202, l. 36.

<sup>17</sup> Eadmer. p. 6, l. 41.

advice of Alexander II. Neither did <sup>1</sup>Anselm ever make scruple of refusing the archbishopric, because he was not chosen by the monks of Canterbury: and in that letter of them to Paschalis II., 1114, though they write *Ralph in praesentia gloriose regis Henrici electus a nobis et clero et populo*; yet whosoever will note the <sup>2</sup>series of that election, cannot see it to have been other than the king's act; insomuch as our <sup>3</sup>writers use often no other phrase than the king gave such preferments, &c. And whilst things stood thus, there was never any interposing from Rome, no question who was lawfully chosen; the popes therefore did labour to draw this from the princes' meddling with, as much as was possible. Some essay might be, 1108, at the settling investitures, for then Anselm <sup>4</sup>wrote to Paschalis, *rex ipse in personis eligendis nullatenus propria uititur voluntate, sed religiosorum se penitus committit consilio*. But this, as the practice proved afterwards, was no more but that he would take the advice of his bishops, or other of the clergy; for, <sup>5</sup>as Diceto well observes, our king did in such sort follow the ecclesiastic canons, as they had a care to conserve their own rights. The fittest way therefore for the pope to get in was, if there should happen any dissensions amongst themselves, that he, as a moderator, a judge, or an arbitrator, might step in.

60. About the Conquest, an opportunity was offered on the contentions between the two archbishops for primacy; in which Canterbury stood on <sup>6</sup>the bulls (true or false) of former popes, that had as a great patriarch made honourable mention of them. When they were both, 1071, <sup>7</sup>with Alexander II., by his advice it was referred to a determination in England; and accordingly, 1072, William I. with his bishops made some settlement, which by them of York was ever stumbled at, pretending the king <sup>8</sup>out of reason of state sided with Canterbury. But this brake into no public contest till, 1116, Thurstan elected to York <sup>9</sup>endeavoured at Rome to divert the making any profession of subjection to Canterbury; but failing in the attempt—that court not liking to fall into a contest it

<sup>1</sup> Vid. ibid. p. 16, l. 48: p. 17, l. 18, etc.

<sup>2</sup> Eadmer. p. 109, l. 40, etc.

<sup>3</sup> Hen. Huntindon. Lib. viii. p. 386, l. 11.

<sup>4</sup> Apud Eadmer. p. 93, l. 42, etc.

<sup>5</sup> A.D. 1175, col. 587, l. 21.

<sup>6</sup> Vid. eas apud Malmesbur. [de Gestis Pontif. p. 208, etc.]

<sup>7</sup> Lanfranc. Epist. iii. p. 301.

<sup>8</sup> Thom. Stubbs, *Actus Pontif. Ebor. col. 1706*, l. 31.

<sup>9</sup> Eadmer. p. 118, l. 5; l. 15, etc.

was not probable to carry—resigned his archbishopric, *spondens regi et archiepiscopo, se, dum viveret, [illum] non reclamaturum*: yet after the <sup>10</sup>clergy of York sued to the pope for his restitution, which produced that letter from Paschal II., in his behalf to Henry I., is in Eadmerus; wherein he desires, if there were any difference between the two sees, it might be discussed in his presence. Which was not hearkened to; but Calixtus II., <sup>11</sup>in a council by him held, 1119, at Rheims (of which before)—the English bishops not arrived, the king's agent protesting against it, the archdeacon of Canterbury telling the pope, that *jure* he could not do it—consecrated him archbishop of York: upon which Henry prohibits him all return into his dominions. And in the interview soon after at Gisors, though Calixtus earnestly laboured the admitting him to his see, the king would by no means hearken to it. So the pope left the business as he found it, and Thurstan to prove other ways to gain the archbishopric.

61. Who thereupon became an actor in the peace about that time treated between England and France: in which his comportsments were such, [the king <sup>12</sup>himself was sometimes heard to say he would not for five hundred marks have wanted his assistance, and it] <sup>13</sup>*proniorem ad sese recipiendum regis animum inflexit*; so as upon the pope's letters he was afterwards restored, <sup>14</sup>*ea dispositione, ut nullatenus extra provinciam Eboracensem divinum officium celebraret, donec ecclesiae Cantuariensi... satisfaceret*. This I take to be the first matter of episcopacy that ever the pope (as having a power elsewhere of altering what had been here settled) did meddle with in England. It is true, whilst they were raw in Christianity, he did sometimes recommend pastors to this church—so <sup>15</sup>Vitalian did Theodore—and farther shewed himself solicitous of it, by giving his fatherly instructions to the English bishops to have a care of it—so did Formosus or some other by his letters, <sup>16</sup>904, upon which Edward the elder congregated a synod, wherein five

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<sup>10</sup> Ibid. p. 120, l. 50: p. 121, l. 6, etc.

<sup>11</sup> Ibid. p. 125.

<sup>12</sup> [Thom. Stubbs, *Actus Pontif. Ebor. col. 1717*, l. 1.]

<sup>13</sup> Simeon. *Dunelm. A.D. 1120*, col. 222, l. 25.

<sup>14</sup> Eadmer. p. 136, l. 43, etc.

<sup>15</sup> Bed. *Hist. Eccl. Lib. iv. c. 1.*

<sup>16</sup> Note, *Malmesbury [de Gestis Regum, p. 47, l. 55]*, says this was A.D. 904, but that agrees not with the papedom of Formosus; Baronius, therefore, corrects it, and makes A.D. 894 (§ xi.) but at that time Edward was not king.

new bishops were constituted, by which an inundation of paganism, ready to break in on the west for want of pastors, was stopped. But it is apparent, this was done not as having dominion over them; for he so left the care of managing the matter to their discretion, as he did no way interest himself in it farther than advise.

62. A meeting of English bishops, 1107, at Canterbury, or (as Florentius Wigornensis styles it) a council restored the abbot of Ramsey deposed, 1102, <sup>1</sup>*apostolico jussu*, or, as Eadmerus, <sup>2</sup>*juxta mandatum domini papæ*. It is manifest, this command from Rome to be of the same nature those I mentioned of <sup>3</sup>Calvin's, or at the most no other than the intercession of the patriarch of a more noble see, to an inferior, that by his means had been converted; for his restitution, after the reception of the papal letters, seems to have been a <sup>4</sup>good while deferred: so that what passed at Rome did not disannul his deprivation here, till made good in England, as at a time when nothing thence was put in execution but by the regal approbation—as the pope himself <sup>5</sup>complained to the king. But after the church of Rome, with the assistance of the English clergy, had obtained all elections to be by the chapters of the cathedrals, upon every scruple she interposed herself.

63. The greatest part of the convent of London, 1136, <sup>6</sup>chose Anselm, abbot of St Edmundsbury, for their bishop, contrary to the dean's opinion and some few of the canons, who appealed to Rome; where the election, 1138, was disannulled, the bishopric by the pope recommended to Winchester, his then, or rather soon after, legate; which so remained till 1141. This is the first example of any bishop chosen, received and in possession of a church in this kingdom, whose election was after quashed at Rome, and the sentence obeyed here; as it is likewise of any *commendam* on papal command in the church of England. [For in times preceding, if need required any such thing, it was by regal authority commanded without the papacy at all interposing. A. D. 962: <sup>7</sup>*Rex Ædgarus Lundoniensem ecclesiam proprio pastore viduatam commisit*

<sup>1</sup> Florent. Wigorn. [Chronicon], A. D. 1107, p. 653.

Eadmer. p. 92, l. 15.

<sup>2</sup> Eadmer. p. 92, l. 14.

<sup>5</sup> Ibid. pp. 113, 115.

<sup>3</sup> Supra, § 20.

<sup>6</sup> R. de Diceto, [Abbrev. Chron.] coll.

<sup>4</sup> "Hoc per literas olim mandaverat."

506, 507.

<sup>7</sup> [Ibid. col. 456, l. 46, etc.]

*regendam Dunstano Wigornensi episcopo. Et sic Dunstanus Lundoniensem ecclesiam commendatam habuit et non titulatam.]* And what was now done seems not to have passed without the 58 king's concurrence.

64. For to <sup>8</sup>deprive William, elected somewhat after archbishop of York, where he did not join, was not so easy. This man chosen, 1142, by the greater part of the chapter, after five years' suit in the court of Rome, <sup>9</sup>St Bernard opposing him, had in the end his election annulled by Eugenius III., in a council held at Rheims ; the canons of York exhorted to choose another ; some of which made choice of Henry Murdac, then as it seems with the pope : who coming as archbishop into England, was not suffered to enter on his archbishopric, and excommunicating Hugh de Puzat, a person preferred by William, was himself by him excommunicated, no intermission of divine service in the city admitted ; and Henry's means to gain his see was by drawing the bishop of Duresme, Carlisle, the king of Scots, and, by the pope's advice, this very Hugh by sweetness to his party, and in the end by the king's son—whom it seems he promised to get advanced to the crown by the power of Rome—making his peace with Stephen, who soon after employed him thither on that errand. And this I take to be the second English election was ever here annulled by papal authority.

65. Here I may observe, that at first, whenever the pope made void an election, he did not take upon him to appoint one in the place vacant : but either sent to the clergy of the same church to choose another, as those to whom it appertained—so did Eugenius III. to York when this <sup>10</sup>H. Murdac was chosen, Innocentius III. when <sup>11</sup>Stephen Langton—or else the bishopric lay vacant, as <sup>12</sup>London after Anselm from 1139 to 1141. But elections being with much struggling settled wholly in the clergy, and Innocentius III. having <sup>13</sup>by definitive sentence excluded the English bishops from having any part in that of the archbishop of Canterbury, they becoming wholly appropriated to the chapters of cathedrals, the pope began to creep 59

<sup>8</sup> Vid. Johan. Hagustald. A. D. 1142  
—1152.

<sup>9</sup> S. Bernard. Epist. cccxxiv. et seqq.

<sup>10</sup> Johan. Hagustald. col. 276, l. 8.

<sup>11</sup> Mat. Paris, [Hist. Major] A. D.

1207, p. 222, l. 40.

<sup>12</sup> R. de Diceto, [Abbrev. Chron.] col. 507, l. 53 : col. 508, l. 20.

<sup>13</sup> Mat. Paris, A. D. 1206, p. 214, l.

44, etc.

in, and <sup>1</sup>ex concessa plenitudine ecclesiastice potestatis, (as he speaks), without any formality of choice, to confer not only bishoprics, but other ecclesiastic promotions, within the precincts of others' dioceses, and by that means to fill the fat benefices of the nation. The first archbishop of Canterbury promoted by this absolute power of the church of Rome seems to have been Richard, 1229, <sup>2</sup>non electo ad archiepiscopatum, sed dato.

66. The <sup>3</sup>French agent, in his remonstrance to Innocentius IV., attributes the beginning of these collations to Innocent III. ; and I have not read that either Paschalis II., Gelasius, Calixtus, or Innocent II., though forced to live sometimes out of Rome, did ever exercise authority that way. But I will give it in his own words :

*Certe non multum temporis elapsum est, ex quo dominus papa Alexander, persecutionis cogente incommodo, venit in Franciam, confugiens ad subsidium inclytæ recordationis regis Ludovici patris regis Philippi; a quo benigne suscepimus est, et stetit ibi diu; et forte vivunt aliqui qui videbunt eum: ipse tamen in nullo gravavit ecclesiam Gallicanam, ut nec unam solam præbendam aut aliud beneficium ipse papa dederit ibi, sed nec aliquis prædecessor suus, nec multi etiam de successoribus dederunt in sua auctoritate beneficium aliquid, usque ad tempora domini Innocentii III., qui primus assumpsit sibi jus istud in tempore suo. Revera dedit multas præbendas, et similiter post ipsum dominus Honorius et dominus Gregorius simili modo fecerunt; sed omnes prædecessores vestri, ut publice dicitur, non dederunt tot beneficia ut vos solus dedistis, &c.*

67. In what year the ambassador from France made this 60 complaint, is not set down ; but <sup>4</sup>Matthew Paris, in his *Historia Minor*, makes mention of it as done in or about 1252.

*Diebus sub eisdem, episcopo Lincolnensi computante, comperatum et probatum est quod iste papa, scilicet Innocentius quartus, plures redditus extortos ad suam contulit voluntatem, quam omnes ejus prædecessores; prout manifeste patet in*

<sup>1</sup> Bulla Gregor. IX. apud Mat. Paris, [Hist. Major] A. D. 1229, p. 355, l. 46.

<sup>2</sup> Ibid. l. 43.

<sup>3</sup> Additamenta Mat. Paris, MS. in

Biblioth. Cotton. [Nero, D, 1 : fol. 127, a, coll. 1, 2.]

<sup>4</sup> Mat. Paris, Hist. Minor, ad an. 1252. [In C.C.C. Cambridge, lvi.]

*lugubri querimonia quam reposuerunt Franci coram papa pro suis intolerabilibus oppressionibus, quæ redacta est in scriptum epistolæ admodum prolixæ, quæ sic incipit, 'Dicturus quod injunctum est mihi,' etc. Quære epistolam, &c.* By which it appears, that great liberty the papacy took in conferring ecclesiastic preferments within the dioceses of others, took its rise from pope Innocent, and, as it seems to me, not at the very beginning of his time; for, 1199, <sup>5</sup>Gelardus, archdeacon of St David's, coming from Rome, *quia idem G. Menevensis ecclesiæ in curia Romana se dicebat electum, hoc ipsum cassavit archiepiscopus, et alium sacravit canonice electum*; though he after bestowed on him a church of twenty-five marks: and this in a case the pope had so earnestly espoused, as he wrote to the bishops of Lincoln, Duresme, and Ely, *si archiepiscopus Cantuarie sæpe dictum Gilardum consecrare differret, ipsi apostolica autoritate freti illum consecrare non differrent*—which yet the archbishop, as against the English liberty, did not doubt to oppose and disannul.

[And here I cannot omit the advising the reader carefully to observe the bulls, charters, subscriptions and writings, he meets with in old 'Leiger' books and transcripts of monasteries: for in those times when few men were masters of pen and ink but the ecclesiastics, things have been obtruded which have no affinity with the age they pretend. Yet some learned men have been not a little deceived by them. We see by this providing men of livings in other bishops' dioceses, popes did not use it before Innocentius III.; yet the author of that treatise, *De vera differentia regiæ potestatis et ecclesiasticæ*, set out, in Henry the eighth's time, an <sup>6</sup>expostulatory letter as of the Conqueror's to shew the abuse of them long before they were heard of in England. So in the <sup>7</sup>*Monasticon Anglicanum*, Theodore subscribes himself an apostolic legate, when no archbishop did so till A.D. 1127, as I have shewed, and he in other subscriptions, less subject to corruption, doth it not; and the council of Calcuth (as I have noted) records the speech of one of them, confessing the pope to have sent hither no priest or

<sup>5</sup> R. de Hoveden, [Annal. Part. Post.] p. 799, l. 8, etc. Gervas. Dorobern. [Actus Pontif. Cant.] col. 1682, l. 27, etc.

<sup>6</sup> [fol. 53, b: ed. 1534.] [The full title of this tract is 'Opus eximium de

vera differentia regiæ potestatis et ecclesiasticæ, et quæ sit ipsa veritas ac virtus utriusque.]

<sup>7</sup> [Vid. supra, § 3, § 25.]

legate, since Augustine himself. That the pope's legates did subscribe no higher than other of their order, I have shewed before (§ 18) and I myself have seen; yet Sir Henry Spelman, in his second tome of Councils [p. 6], I find to rank him after the queen, as I have seen him in other late books so ranked; differing from other of elder and better note. And this hath been often laid to their charge, and sometimes they have been convicted of it.]

68. But thus it continued not long: for <sup>1</sup>Honorius, the immediate successor to Innocentius III., shewing such as served the apostolic see, and resided with it, were worthy *congruis beneficiis honorari*, and were therefore possessed of divers both in England and other parts, which they did administer with so great care, *quod non minus beneficiantibus quam beneficiatis utiliter est provisum*; unde, *quia nonnunquam beneficiatis*

61 *hujusmodi decadentibus, beneficia quæ obtinuerant, inconsultis his ad quos eorum donatio pertinebat, aliis successive collatis, perpetuo illis ad quos pertinent videbantur amitti, propter quod etiam murmurabant plurimi, et alii se difficiliores ad conferendum talibus beneficia exhibebant: nos volentes super hoc congruum remedium adhibere, ne cuiquam sua liberalitas sit dampnosa, per quam potius meruit gratiam et favorem, statuimus, ut clericis ecclesie Romanae, vel aliis Italicis, qui præbendas vel ecclesiæ, seu alia ecclesiastica beneficia in Anglia obtinent vel obtinuerint a modo decadentibus, præbendas vel ecclesiæ, seu alia beneficia nequaquam a nobis vel alio illa vice alicui conferantur, sed ad illos libere redeant ad quos illorum donatio dinoscitur pertinere, &c. Dat. Lateran. <sup>2</sup>quarto Kalend. Martii, pontificatus nostri anno quinto.*

69. Yet neither this, nor the renewing of it by Gregory IX.—with a special indulgence <sup>3</sup>directed *venerabilibus fratribus universis archiepiscopis et episcopis, ac dilectis filiis abbatis, et aliis ecclesiarum prælatis per Angliam constitutis... ut si quando ad vos literæ apostolice pro beneficiandis hujusmodi de cætero emanarunt, ad provisionem ipsorum inviti non teneamur, nisi de hac indulgentia plenam fecerint mentionem. Dat. Lateran. <sup>4</sup>15 Kalend. Maii, pontificatus nostri anno quarto*,—could quiet the English, or keep them from that confederation

<sup>1</sup> In antiquo MS. Bullarum Roman.

Pontif. Archiepisc. Cant. Bulla vi.  
Honor. III.

<sup>2</sup> 26 Febr. A.D. 1221.

<sup>3</sup> In eodem MS. Greg. IX. Bulla iii.

<sup>4</sup> April 17, A.D. 1230.

in Matthew Paris, A.D. 1231, beginning, <sup>5</sup> *Tali episcopo et tali capitulo, universitas eorum, qui magis volunt mori, quam a Romanis confundi, &c.* Which the popes, by wisdom, and joining the regal authority with their spiritual, found means to bring to naught; and pursuing the papal interest without regarding what had passed from them, gave the kingdom occasion, 1241, to <sup>6</sup>observe, that in only three years Otho had remained legate here, he bestowed more than three hundred spiritual promotions, *ad suam vel papæ voluntatem*; the pope having <sup>7</sup>contracted (as the report went) with the Romans, to confer to none but their children and allies the rich benefices here, especially of religious houses—as those perhaps he had <sup>62</sup>most power over—and to that effect had written to the bishops of Canterbury and Salisbury, *ut trecentis Romanis in primis beneficiis vacantibus providerent*. So that in the council at Lyons, 1245, they complain of these exorbitances, <sup>8</sup>and shew the revenues the Italians received in England not to be less than sixty thousand marks, (of which more <sup>9</sup>hereafter); and in the year following, 1246, reiterated their griefs to Innocentius IV. <sup>10</sup>*quod Italicus Italico succedit*. Which yet was with little success: for the popes having (as we have heard) first settled all elections in the ecclesiastics, and after upon several occasions, on the submitting of the English to his desires, bestowed the benefices in this and other kingdoms on his dependants, <sup>11</sup>John XXII.—or (as <sup>12</sup>some seem to think) Clement V., his immediate predecessor—endeavoured the breaking of elections by cathedrals and convents, reserving the free donation of all preferments to himself alone.

70. From whence proceeded the reiterated complaints against papal provisions, in the [<sup>13</sup>history and] parliaments of Edward III. and Richard II.—for this kingdom never received his attempts in that kind—to which purpose the history <sup>14</sup>of John

<sup>5</sup> Mat. Paris, Hist. Major, p. 371,

1. 18.

<sup>6</sup> Ibid. p. 549, l. 17, l. 23, etc.

<sup>7</sup> Ibid. p. 532, ll. 43—50.

<sup>8</sup> Apud M. Paris, p. 667, l. 36.

<sup>9</sup> Cap. iv. § 17.

<sup>10</sup> Mat. Paris, A.D. 1246, p. 699, l. 9.

<sup>11</sup> Lettres du Cardinal D'Ossat, [ccxcvi. p. 686.]

<sup>12</sup> Rot. Parl. 3<sup>o</sup> Ric. II. § 37.

<sup>13</sup> [Hen. de Knyghton, A.D. 1343, col. 2583, l. 36, etc.]

<sup>14</sup> W. Thorn, col. 2082, l. 4, etc. Vid. Thom. Walsingham, A.D. 1374, p. 188, l. 18: Thorn, col. 2187, l. 57. See the history of Nicholaus de Spyna resigning the abbey of St Augustine's, and, on his nominating him, Thomas Fyndon preferred to be abbot there by Martin IV., who on the receipt of the papal bulls ac-

Devenish is remarkable. The abbot of St Augustine's dying 1346, the twentieth of Edward III., the convent by the king's leave chose William Kenington; but Clement VI. by provision bestowed the abbacy on John Devenish, whom the king did not approve of, yet came thither armed with papal authority. The prior and convent upon command absolutely denied him entrance, 63 *ingressum monasterii in capite denegando*; who thereupon returned to Avignon. The business lying two years in agitation, the king in the end, for avoiding expences and other inconveniences, <sup>1</sup>*ex abundanti concessit ut, si idem Johannes posset obtinere a summo pontifice quod posset mutare stylum suæ creationis sive provisionis, scilicet non promoveri abbatia prædicta ratione donationis vel provisionis apostolicae, sed ratione electionis capituli hujus loci, illa vice annueret, et suis temporalibus gaudere permitteret.* Sed quidem hujusmodi causa coram ipso summo pontifice proposita, concludendo dixit, *se malle cedere pontificio, quam suum decretum taliter revocare, &c.* Which so afflicted the poor man, as the grief killed him on St John Baptist's eve, 1348, without ever entering the abbey; and the dispute still continuing, the pope, 1349, wrote to the king, <sup>2</sup>*ne rex impediret, aut impediri permitteret promotos a curia per bullas acceptare beneficia sibi taliter incumbentia.* To which his majesty answered, *quod rex bene acceptaret provisos clericos qui essent bonæ conditionis, et qui digni essent promoveri, et alios non.*

71. But the year following, 1350, 25<sup>o</sup> Edward III., the <sup>3</sup>commons meeting in parliament complain with great resentment of these papal grants, shewing the court of Rome had reserved to itself both the collation of abbeys, priories, &c. as of late in general all the dignities of England, and prebends in cathedral churches, &c. Upon which the statute of provisors was in that parliament enacted; which was the leader to those other statutes, 27<sup>o</sup> and 38<sup>o</sup> Edward III. <sup>4</sup>The 48<sup>o</sup> Edward III., 1374, the

quainted Edward I. with what had passed at Rome, himself being in England; yet by command of the house was seized into the king's hand, and he at the parliament held at Acton Burnell fined four hundred marks, *pro eo quod sic fuerat creatus in abbatem, licentia domini regis minime petita.* *Thorn.* col. 1939, l. 1; col. 1934.

<sup>1</sup> Vid. 'Variantes Lectiones' in *Thorn*,

ad col. 2117, l. 54. *Quæ vero ibi debent interseri pertinent ad histor. de qua hic agitur, col. 2062.*

<sup>2</sup> *Hen. de Knyghton, [de Eventibus Anglie] col. 2601, ll. 37—51.*

<sup>3</sup> *Rot. Parl. 25<sup>o</sup> Edw. III. Oct. Purif. § 13.* See the words of the petition, cap. iv. § 15.

<sup>4</sup> *Thom. Walsingham, p. 188, l. 18:*

treaty between that king and Gregory XI. was concluded after two years' agitation, wherein it was expressly agreed, *quod papa de cætero reservationibus beneficiorum minime uteretur, &c.* Notwithstanding which, the commons the next parliament preferred a petition, shewing <sup>5</sup>all the benefices of England would not suffice the cardinals then in being, the <sup>6</sup>pope having by the addition of twelve new ones raised the number to thirty, which <sup>64</sup>was usually not above twelve in all; and therefore they desire it may be ordained and proclaimed, that neither the pope nor cardinals have any procurator or collector in England, *sur peine de vie et de membre, &c.* And the inconveniences still continuing, <sup>3</sup>Richard II. produced that <sup>7</sup>statute is in the print—I shall not here repeat otherwise than that the commons in the roll seem to lay the beginning of these excesses no higher than Clement V.

72. By these arts, degrees and accessions, the church of Rome grew by little and little to that immenseness of opinion and power it had in our nation; which might in some measure —whilst it was exercised by connivance only, upon the good correspondency the papacy held with our kings and church—be tolerated, and the kingdom at any time by good laws redress the inconveniences it sustained. But that which hath made the disputes never to be ended, the parties not to be reconciled, is an affirmation that Christ commanding Peter to feed his sheep, did with that give him so absolute a power in the church—and derived the like to his successors, bishops of Rome—as without his assent no particular church or kingdom could reform itself: and—for that he as a bishop cannot be denied to have as much power as others from Christ, and may therefore in some sense be said to be <sup>8</sup>Christ's vicar—to appropriate it only to the pope, and draw thence a conclusion that *jure divino* he might and did

Rot. Parl. 1<sup>o</sup> Ric. II. § 66: W. Thorn,  
A. D. 1373, col. 2187, l. 58.

<sup>5</sup> Rot. Parl. 50<sup>o</sup> Edw. III. § 110, § 115.

<sup>6</sup> Greg. XI.

<sup>7</sup> Statutes, 3<sup>o</sup> Ric. II. c. 3: 7<sup>o</sup> Ric. II. c. 12.

<sup>8</sup> "Christi autem vicarii sacerdotes sunt, qui vice Christi legatione funguntur in ecclesia." Euseb. Pap. Epist. iii. [apud Concil. ed. Labb. Tom. I. 1389.]

"Electum vero a fratribus *Christi vicarium* dignanter suscipiant" (scil. in Abbatem). Monachorum Hydensem leges ab Edgardo, c. xv.: apud Spelman. Concil. [Tom. I.] p. 440. "Quis locus poterit esse tutus, si rabies sancta sanctorum cruentat? et viowrios *Christi*, alumnos ecclesiæ, impune dilacerat?" Ep. W. Senonensis Archiep. apud R. de Hoveden, A.D. 1171, p. 523, l. 39, etc., de morte Thomas Archiepiscopi.

command in all particulars *vice Christi* : [as he who held <sup>1</sup>locum Dei in terris ; <sup>2</sup>de cuius amplitudine [potestatis] disputare fas non est, that <sup>3</sup>non puri hominis sed veri Dei vicem gerit in terris]. And though no other church in the christian world doth agree with the Roman in this interpretation—though historians of unquestioned sincerity have, as we have in some

65 measure heard, in their own ages delivered when and how these additions crept in, and by what oppositions gained—that our princes have, with the advice of the lay and clergy, ever here moderated the exorbitances of the papacy in some particular or other, and likewise reformed this church—though the stipulations between our kings and Rome have not been perpetual, but temporary, not absolute, but conditional ; as is to be seen in that passed between Alexander III. and Henry II., viz. <sup>4</sup>juravit quod ab *Alexandro summo pontifice, et ab catholicis ejus successoribus non recederet, quamdiu ipsum sicut regem catholicum habuerint*—that the English bishops being excommunicated by the pope, <sup>5</sup>might not take an oath of obedience to his commands, *quia regni consuetudines impugnabat*, though he did never exercise any authority here, but according to such stipulations, contracts and agreements with our princes, as the laws permitted ; and therefore when he sent hither a legate *a latere*, “<sup>6</sup>he was tretyd with or he cam in to the lond, whon he schold have exercise of his power, and how myche schold bee put in execution : An aventure, after hee had bee reseyved, hee whold have used it to largely to greet oppression of your peple, &c.”—as the archbishop wrote to Henry V., as I have shewed § 43.

73. Though the lawyers of the kingdom do <sup>7</sup>constantly affirm, as the law and custom of the realm, the king's courts never to have carried regard to any foreign excommunication, and if any such came from Rome, <sup>8</sup>not to be put in execution, but by allowance first had—to which effect it is remembered, the bishops of London and Norwich having published in their dioceses the pope's excommunication of Hugh, earl (as it seems)

<sup>1</sup> [Innocent. III. apud Gervas. Doro-  
bern. col. 1624, l. 67.]

<sup>2</sup> [R. de Hoveden, p. 733, l. 38.]

<sup>3</sup> [De Translatione Episcopi, c. 3.]  
[Vid. Corpus Juris Canon. Tom. II.  
p. 29.]

<sup>4</sup> Gervas. Dorobern. col. 1422, l. 18 :  
R. de Hoveden, A. D. 1172, p. 529, l. 32.

<sup>5</sup> Joan. Saresber. Epist. cclxxx. p.  
483.

<sup>6</sup> Epist. Henr. Chichele, in vita ejus,  
p. 36.

<sup>7</sup> [La Grāunde Abridgement, par M.  
Ant. Fitzherbert,] ‘Excommengement,’  
§§ 4, 6, 10 : [fol. 361, b : ed. 1565.]

<sup>8</sup> Vide Hoveden, p. 496, l. 37.

of Chester, without the privity of Henry II. or his chief justiciary, the king's writ issued out in this manner: <sup>9</sup> *Londoniensis et Norwicensis episcopi sint in misericordia regis, et summoneantur per vicecomites et bedellos, ut sint* <sup>10</sup> *contra justicias regis,* 66 *ad rectum faciendum regi et justiciis ejus de eo quod, contra statuta de Clarendone, interdixerunt ex mandato papæ terram comitis Hugonis, et excommunicationem quam dominus papa in ipsum fecerat per suas parochias divulgaverunt sine licentia regis.* This however contracted in Hoveden, 1165, and in <sup>11</sup> Paris, 1164, yet the difference is such as may deserve a remembrance. It seems to me, what our kings claimed, not to be altogether unlike the <sup>12</sup> *exequatur* of Naples, observed to this day in that kingdom, notwithstanding all contests from Rome.

74. Neither did the crown ever relinquish this right, not at the peace after Becket's death, when <sup>13</sup> Henry II. assented to quit no other than *consuetudines quæ introductæ sunt tempore suo;* [which he reputed *aut parcas aut nullas*<sup>14</sup>; and this is clear not to have been, as appears by <sup>15</sup> Eadmerus]. It is farther observable, that by the common laws (that is, <sup>16</sup> the common custom of this realm) the <sup>17</sup> sentence of the archbishop is valid in England, and to be allowed in the king's courts, though controlled by the pope.

[For the farther manifesting of which, that of <sup>18</sup> St Dunstan may be here added (to those remembered § 17) of a certain earl marrying within the degrees of consanguinity, who excommunicated by Dunstan, hath his recourse first to the king; but finding that not to persuade the austere bishop to give him absolution, proceeds to Rome, from whence he obtains a command, *ut eum absolveret*: to which, ' *Ab sit hoc,*' *inquit Dunstanus, ut causa alicujus mortalis hominis contemnam legem Dei mei:* *quod videns comes poenituit et uxorem suam repudiavit, nudisque pedibus laneis induitus virgamque in manu gerens cecidit ad pedes Dunstani, et tunc primo absolutus est.*

<sup>9</sup> Ex antiquo MS.

<sup>10</sup> "Coram justiciariis regis." R. de Hoveden, [p. 496, l. 52.]

<sup>11</sup> Hist. Major, p. 103, l. 43.

<sup>12</sup> Girolamo Catena, Vita di papa Pio V. pp. 96, 97, 98, 100 [in Roma, 1587]: Adriani, Istoria de' suoi Tempi, Lib. xix. p. 1378, & [in Venetia, 1587.]

<sup>13</sup> Gervas. Dorobern. col. 1422, l. 50.

<sup>14</sup> [Hen. II. apud Joan. Saresber. Ep. ccxc.]

<sup>15</sup> Hist. Novorum, p. 6, l. 24, etc.

<sup>16</sup> [La Graunde Abridgement] 'Action sur le cas,' § 25, [fol. 13.]

<sup>17</sup> [Ibid.] 'Excommengement,' § 6, [fol. 361, b.]

<sup>18</sup> [Capgrave, Nova Legenda, in Vita Dunstan. fol. xciii. b, col. 2.]

I will not examine the truth of this narration, which I confess I find some difficulty of agreeing in every circumstance with the use of the times; in which princes as well as bishops did settle matrimonial causes, as the Codex of Theodosius and Justinian, the forms by them used in dispensations, divorces, &c. remaining in <sup>1</sup>Cassiodorus, their laws and of Alfred, Edmund, Canutus, assure us. However, it shews the opinion this church entertained of the papal commands being only suasory, which the archbishop laid aside as occasion served, conceiving his authority no other than human, and not binding till admitted here by him. See § 54.] .

To shew farther our princes had no regard to any thing of this nature from thence, other than such a complying with a reverend prelate as I have formerly mentioned did admit, it may not here be unfitly inserted what <sup>2</sup>Froissard writes of Edward III., with whom the Flemings joined against the French; upon which, (but I shall deliver it in his own words): *Adonc le roy de France s'en complaignit au pape <sup>3</sup>Clement sixiesme, qui getta une sentence d'excommunictum si horrible, qu'il n'estoit nul prestre qui osast celebrer le divin service. De quoy les Flamens envoyeroent grand' complainte au roy d'Angleterre; lequel, pour les appaiser, leur manda que la premiere fois qu'il rappasseroit la mer, il leur ammeneroit des prestres de son pays qui leur chanteroient la messe, vousist le pape ou non; car il estoit bien privilegié de ce faire: et par ce moyen s'appaiseroit les Flamens.* As for the privilege here spoken of, that can be no other than the obligation all kings owe unto God, for seeing his word sincerely taught them live under their protection, without the disturbance of any.

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75. [To which purpose, that we find in the <sup>4</sup>parliament roll of Henry IV. may here have a place, as a farther confirmation of that before. The archbishop of Canterbury intending to visit Oxford in Richard the second's time, the university opposed him, upon the pretence of a papal bull, exempting them from the visitation of any archbishop, ordinary, or founder whatsoever. Upon which, some stirs arising, his majesty ordered

<sup>1</sup> [Cassiodor. Variarum Lib. vii. c. 40, 46.] <sup>2</sup> Chronique de Froissart, Vol. I. c. 47, [p. 53 : à Paris, 1574.] <sup>3</sup> "Benedictus XII." Annales Flan-

driæ, Lib. xii. p. 163, [ed. Francofurt. 1580.]

<sup>4</sup> [Rot. Parl. 13<sup>o</sup> Hen. IV. §§ 15, 16, 17.]

the said bull to be brought into the chancery, and upon advice of his council, the same was adjudged *in præjudicium coronæ suæ ac legum et consuetudinum regni sui enervationem, et in hæreticor' et Lollardor' ac homicidar' et alior' malefactor' favorem et audaciam dictæque universitatis verisimilem destructionem, &c.* Upon which, command was given the said bull be not at all put in execution, but a public act under the seal of the university be sent the king of their renouncing the same. On this resolution, the chancellor of the university and his party, to save themselves from episcopal visitation, applied themselves to the king as to whom it did *solum et in solidum pertinere*; who resolved it as a right of the archbishop. Afterwards, 12<sup>o</sup> Henry IV., Thomas archbishop of Canterbury intending a visitation there, Richard Courtenay, chancellor, Benedict Brent and John Byrch, proctors, and others with strong hand refused him; by reason of which, the cause was again brought before the king, who sitting himself in person at Lambeth, the seventeenth of September, 12<sup>o</sup> Henry IV., ratified all had been done before in Richard the second's time—which was likewise confirmed after in parliament *de assensu dominor' spiritualium et temporalium necnon communis in eodem parliamento.* By all which it is manifest, how little papal bulls or commands, as of themselves, were at any time esteemed in England.]

It is certain our kings have on occasion been so far from yielding obedience to the attempts of Rome, as Edward I. could not be induced to spare the life of one brought a <sup>5</sup>bull from the pope, might have made some disturbance, but by his abjuring the realm; as his grand-child Edward III. did <sup>6</sup>cause some to suffer [death] for the same offence. And on occasions our kings have prohibited all intercourse with Rome; <sup>7</sup>denied their bishops going thither so much as for confirmation, but the metropolitans, if need were, should by the king's writ be charged to confirm them; <sup>8</sup>commanded their subjects not to rely on any should come thence, affirming, *quod in regnum nostrum nec propter negotium nostrum nec vestrum ullatenus intrabit ad terram*

<sup>5</sup> [La Graunde Abridgement, 'Accion sur le cas,' § 41, fol. 14, a.]

<sup>6</sup> Thom. Walsingham, A. D. 1358, p. 173, l. 44.

<sup>7</sup> R. de Hoveden, p. 496, l. 37: Rot. Parl. 3<sup>o</sup> Hen. V. Pars ii. (16<sup>o</sup> Martii) § 11. See also 9<sup>o</sup> Hen. IV. § 37.

<sup>8</sup> Gervas. Dorobern. col. 1552, l. 51.

*nostram destruendam*—[though they did then hold him the first patriarch of the world, *princeps apostolicæ coronæ, principium unitatis, &c.*] Yet notwithstanding, so notorious a truth, backed with so many circumstances, grounded upon unquestioned monuments of antiquity, hath not been received; but the bare affirmation, Christ by *pascere oves meas* intended Peter, and by consequence the pope, to be the general pastor of the world, and the meaning of those words to be, that he should <sup>1</sup>*regio more imperare*, hath so far prevailed with some, as to esteem the standing for the rights of the kingdom, the laws and customs of the nation, to be a departing from the church catholic; and to esteem no less than heretics those, who defending that which is their own from the invasion of another, will not let themselves be led hood-winked to think the preservation of their proper liberty is a leaving Christ, his church, or the catholic faith.

76. I dare boldly say, whoever will without partiality look  
 68 back, shall find the reverence yielded from this church to Rome for more than a thousand years after Christ, to have been no other than the respect of love, not of duty, and popes rather to *consulere* than *imperare*; their dictates to have been of the same nature <sup>2</sup>the German princes were of old, *auctoritate suadendi magis quam jubendi potestate*, never requiring a necessity of obedience *eo nomine* that they came from Rome, but for that they were just and reasonable; neither did the pope send any agent hither to see them put in execution; but the archbishop, according to the exigent of times, receiving his wholesome advices, caused such as he held of them did conduce to the good of the English church to be observed. So Theodore <sup>3</sup>received those of pope Martin, but <sup>4</sup>did not them, concerning Wilfred, from Agatho. [Nor Dunstan that concerning the incestuous earl, of which before, § 74. In the contention between the two archbishops, about 1119, touching the profession of obedience to Canterbury, at Thurstan's consecration into York, upon his offer to remit himself in that to the pope, Ralph replied: <sup>5</sup>*Si dominus papa mihi ore ad os præcipere ut vos, seposita professione,*

<sup>1</sup> Bellarmin. *Recognitio Libri de Summo Pontifice*, p. 2, n [prefixed to the 'Disputations,' ed. Colon. 1628.]

<sup>2</sup> Tacitus, *de Germania*, c. xi. : Vid. Lanfranc. *Epist. viii. p. 305.*

<sup>3</sup> Bed. *Hist. Eccl. Lib. iv. c. 17.*

<sup>4</sup> W. Malmesbur. [de Gestis Pontif. p. 196, l. 29, etc.]

<sup>5</sup> [Stubbs, in *Vit. Archiep. Ebor. col. 1714, l. 40.*]

*consecrarem, de hoc illi minime obedirem.* And though the historian (if he were not too favourable to the archbishops of York, whose lives he composed) says this was reputed by such as heard it, <sup>6</sup>*in dominum papam perperam jaculatum*; yet it is manifest to have been the tenet of the English church, in that he and the church of Canterbury, in a letter yet extant, not only persist in the same, but shew their obedience to that see to be *quod Roma Cantuariae, id Cantuaria toti Britanniae voluntate et beneficio ministravit*—and to prove this cites a saying of <sup>7</sup>Gregory the Great, and tells them <sup>8</sup>plainly that ‘he will not give his vine, nor sell the inheritance of his fathers.’ And in the same year <sup>9</sup>John, archdeacon of Canterbury, in a council at Rheims, did not only claim the benediction of him as proper to the see of Canterbury, but told the pope, intending the bestowing it himself on Thurstan there, *nec ipsum, licet officio papæ fungeretur, jure posse ecclesiae Cantuariensi jus suum præripere.*] When Alexander II. had exempted the <sup>10</sup>abbot of St Edmundsbury from the jurisdiction of the bishop of Norwich, Lanfranc took the act from the abbot: and Gregory VII. is so far from using commands in the cause, as he only earnestly intreats the archbishop he would stop the bishop of Norwich from molesting the said abbot; yet himself as it seems did not restore the bull of immunity to him during that pope’s life, (as is shewed). In the year 1070, on the king’s desire in a council at Windsor, <sup>11</sup>Agelricus, bishop of the south Saxons, is degraded, and his bishopric conferred on Stigandus: Alexander II. not approving what had passed, <sup>12</sup>writes to the king, this cause seemed to him *non ad plenum tractata, ideoque sicut in canonibus cautum est, in pristinum locum debere restitui, judicavimus.* *Deinde causam ejus, juxta censuram canonicæ traditionis diligenter retractandam et definiendam, prædicto fratri nostro archiepiscopo Lanfranco commisimus.* It is certain—however some writers might upon this or for other causes think his degradation to have been *non canonice*—those

<sup>6</sup> [Ibid. l. 43.]

<sup>7</sup> [Ibid. col. 1747, l. 36.]

<sup>8</sup> [“Non dabo vineam meam, nec vendam hæreditatem patrum meorum.”

Ibid. 1747, l. 54.]

<sup>9</sup> [Eadmer. p. 125, l. 28.]

<sup>10</sup> Vid. Eadmer. p. 62, l. 35: Lan-

franc. Ep. xx. p. 311.

<sup>11</sup> Florent. Wigorn. A. D. 1070, pp. 636, 637: Simeon. Dunelm. col. 202, l. 30, etc.

<sup>12</sup> Baron. Annal. Tom. XI. ad an. 1071, xi.

times did not interpret this (though writ with so great earnestness) for other than advice or intercession, not as of a person had an absolute power of commanding in the business; for we never read of any proceedings upon it, not Lanfranc at all ever to meddle in the case, that he ever esteemed <sup>1</sup> Stigand a lawful bishop, who, in the year 1075, <sup>2</sup> being in a council at London, according to the decrees of it, removed his episcopal chair from Selsey to Chichester, of which he <sup>3</sup> died bishop, 1087—without being at all, for what appears, questioned or disturbed after the first grant of it. Divers examples of the like nature occur, too long to be repeated, where the king or <sup>4</sup> his chief justice prohibit the papal precepts from being put in execution: and it is agreed by lawyers, that not the command, but the constant obedience, is it which denotes a right of commanding; and in cases of this nature *prohibentis potior est conditio*, one example in the negative, when the thing is stood upon, being of more weight than twenty by compliance in the affirmative.

77. It is probable, neither the king nor the bishops would introduce any new matter of great concernment into this church without the privity of so great a doctor, patriarch of a see, from which their ancestors had received the first principles of christian religion. [Neither can I find the papacy for more than a thousand years did claim authority over the church, on other grounds than its being converted by such as were sent thence. <sup>5</sup> *Universum siquidem terrarum orbem* (says Paschalis II.) *Dominus et Magister noster suis discipulis dispertivit, sed Europæ fines Petro singulariter commisit et Paulo.* *Nec per eorum tantum, sed per successorum discipulos, ac legatos, Europæ universitas conversa est et confirmata.* *Unde usque ad nos (licet indignos) eorum vicarios hæc consuetudo pervenit; ut per nostræ sedis vicarios graviora ecclesiarum per provincias negotia pertractarentur, seu retractarentur.* Which is in effect the same Innocentius I., about 410, gives Decentius, bishop of Eugubio, for them observing the manners of Rome: <sup>6</sup> *Cum* (says

<sup>1</sup> Lanfranc. Epist. xxvii. xxviii. pp.

314, 315. [Both these epistles are addressed 'dilectissimo fratri Stigando'; and in the former is added 'Cistrensi episcopo'.] Vid. Eadmer. p. 13.

of his works.]

<sup>3</sup> Florent. Wigorn. A. D. 1087, p. 642.

<sup>4</sup> Vid. Gervas. Dorobern. A. D. 1087, col. 1503, l. 38.

<sup>5</sup> [Epist. Paschal. II. apud Eadmer. p. 115, l. 14, etc. A. D. 1115.]

<sup>6</sup> [Ep. i. Innocent. I.] [Vid. Concil. ed. Labb. Tom. II. 1245, d.]

<sup>2</sup> W. Malmebur. [de Gestis Pontif.

Lib. i. p. 214, l. 6] : Vita Lanfranci, c. xii. p. 13, [prefixed to the Paris edition

he) sit manifestum, in omnem *Italiam, Gallias, Hispanias, Africam atque Siciliam, insulasque interjacentes, nullum instituisse ecclesias, nisi eos, quos venerabilis apostolus Petrus aut ejus successores constituerint sacerdotes*—making no mention of the Britons as under Rome.] And this is further manifest, in that what passed, if he were acquainted with it, was by the princes' and English bishops' authority, not his. When Offa intended the erecting of Lichfield into an archbishopric, he did it by a council at Calcuith: Lambertus [or Jambertus] (as what he approved not) producing <sup>7</sup>*crebra sedis apostolicae et vetera et nova edicta* against it, yet the thing proceeded. Lucius II. <sup>8</sup>went so far in his intentions to raise Winchester to an archiepiscopal chair, as he sent the pall to the bishop: yet it being not approved here (as the event shews) that town never yet had the honour. Henry I., having in his <sup>9</sup>laws, [following the steps of his predecessor king <sup>10</sup>Edgar,] appointed how a bishop, presbyter, monk, deacon, &c., should suffer, committing homicide, concludes, *si quis ordinatum occidat, vel proximum suum, exeat de patria sua, et Romam 70 adeat, et papam, et consilium ejus faciat; de adulterio, vel fornicatione, vel <sup>11</sup>nunnae concubitu similiter paeniteat.* Where it is observable, the king ordains the penance, permits the delinquent's peregrination to Rome, to receive from the pope (as from a great doctor of the church) spiritual counsel, which else he was not admitted to seek; for <sup>12</sup>*peregrina judicia modis omnibus submovemus; and again, <sup>13</sup>ibi semper causa agatur, ubi crimen admittitur.*

78. William I.—who began his expedition against Harold by the counsel of Alexander II., and received a <sup>14</sup>banner from him—minding the deposition of the archbishop of Canterbury, procured the pope to send certain ecclesiastics hither to join in the action, as likewise soon after for determining the question of

<sup>7</sup> W. Malmesbur. [de Gestis Regum, Lib. i. p. 30, l. 6.]

<sup>8</sup> R. de Diceto, A.D. 1142, col. 508, l. 35: Mat. Westmonast. [Flores Hist. p. 244, l. 18.]

<sup>9</sup> Leges Hen. I. c. 73, p. 204, l. 29, etc. [ed. 1644.]

<sup>10</sup> [Vid. Canones sub Edgardo dati, c. 29: apud Spelman. Tom. I. p. 465.]

<sup>11</sup> Legendum 'Nunnae' cum MS. London. Seld. et nostro; non 'nimio,' ut MS. Schachar. [The reading 'Nunne' is adopted in 'Ancient Laws and Institutes of England,' Vol. I. p. 578.]

<sup>12</sup> Leges Hen. I. c. 31, p. 187, l. 29.

<sup>13</sup> Ibid. c. 5, p. 178, l. 28.

<sup>14</sup> Ingulph. Histor. p. 900, l. 25.

precedency between Canterbury and York; upon which there grew an opinion, <sup>1</sup> *archiepiscopum Cantuariensem a nullo hominem, nisi a solo papa, judicari posse vel damnari, nec ab aliquo cogi pro quavis calunnia cuiquam, eo excepto, contra suum velle respondere.* This no doubt was promoted by the archbishops, as what exempted them from all home jurisdiction, the bishops in general did after think in some sort to introduce; and thereupon put in this petition in parliament, <sup>2</sup> 18<sup>o</sup> Edward III., *que pleise a roi, en meyntenance de l'estat de seinte esglise, grantier et ordeynier en cest parlement, que nul ercevesque ne evesque soit desormes arreynez, ne empeschez devant ses justices, en cause criminale, par quecumque voie, desicomme sur tiele cause nule alme ne les poet jugger sinoun le pape soulement.* But to this the answer is no other than, *Il est avis, que en cause de crime, nul ercevesque ne evesque soit empeschez devant les justices, si le roi ne le commande especialment tant que autre remedie soit ordeynez*—which he did likewise confirm by charter there registered, and as <sup>3</sup> Walsingham hath truly recorded.

71 79. This opinion, though <sup>4</sup> new to the English, questionless encouraged Anselm to oppose the king in many particulars, and popes to go farther; as to claim princes should not confer investitures, nor define matters of episcopacy, &c.; then to bestow preferments within this kingdom, at first by consent, and with the limitation no Italian to succeed another, then to reserve to themselves the collation of all benefices; of which before To conclude this—whosoever will without prejudice weigh the reformation of England by Henry VIII., Edward VI., and more especially queen Elizabeth, in the point of supremacy, must grant these princes did not assume to themselves any thing, but such particulars as the court of Rome had in a long series of time incroached in on the crown and English church. If at any time our ancestors styled the pope *princeps episcoporum*, it was in no other sense than they did St Peter, *princeps apostolorum*; by which what principality they intended him, we cannot better understand than by the Saxon, who renders it

<sup>1</sup> Eadmer. p. 29, l. 23, etc.

<sup>2</sup> Rot. Parl. 18<sup>o</sup> Edw. III. § 23, ‘Petitiones Cleri’; § 24, ‘Respons. ad easdem.’

<sup>3</sup> Thom. Walsingham, A.D. 1344, p.

164, l. 56.

<sup>4</sup> “Protinus intellexerunt quod prius non animadverterunt.” Eadmer. p. 29, l. 21.

<sup>5</sup> Σαλοῦρ Σάρα Αποτολα, “the elder of the apostles.” If they called him “successor” or *vicarius Petri*, they were not alone appropriated to him, for <sup>6</sup>Petrus Blesensis and others give the bishop of York the same titles; and the bishop of Bath, who had a church dedicated to St Peter, he bids remember, *quia Petri vicarius estis, &c.* [The church of Rochester, dedicated to St Andrew, Gundulphus, bishop of it, begins a charter: *Ego Gundulphus, licet indignus, mitissimi sanctorum Andreae apostoli vicarius.* And a little after: *Et ut in perpetuum integra et inviolata permaneat, signo crucis Christi vice piissimi sanctorum Andreae apostoli eam consigno et corroboro.* This deed, bearing date MCIII. 2<sup>o</sup> Nonas Martias, was confirmed by the subscriptions of the king, Anselm, the queen, who writes: *Signum Matildis reginae et filiae Anselmi archiepiscopi*, and thirteen more, the chiefest of the kingdom.] So did they likewise, in some sense, call kings <sup>8</sup>Christ’s vicars, as well as bishops. If at any time they gave the pope the title of <sup>9</sup>head of the church, [it was as Justinian <sup>10</sup>says of Constantinople, ‘Η ἐν Χωνσταντινούπολει ἐκκλησία πασῶν τῶν ἄλλων ἔστι κεφαλὴ, “The church of Constantinople is the head of all other churches,”’ *Ἐπιφανίω...οἰκουμενικῷ πατριάρχῃ*, “to Epiphanius, the oecumenical patriarch,” which no man interprets to import more than his being the first patriarch of those parts, as St Bernard teaches us, he (the pope) was here <sup>11</sup>*in beneficam causam*.] And so they <sup>12</sup>termed Oxford “the fountain and mother of our christian faith.” I cannot therefore but wish a <sup>13</sup>late writer, that says, “England had a known sub-

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<sup>5</sup> Bed. Hist. Eccl. [Latin-Saxon ed. Cantab. 1722] Lib. II. c. 6, [p. 508, l. 12] : Lib. IV. c. 18, [p. 586, l. 26.]

<sup>6</sup> Epist. cxiii. cxlviii. [pp. 174, 233] : Vid. Stubbs, *Actus Pontif. Ebor. col. 1703, l. 37* : col. 1704, l. 13; et supra § 72.

<sup>7</sup> [Textus Roffensis, fol. 219, b.] [c. 211, p. 226, ed. Hearne, Oxon. 1720. See more on the application of the title *vicarius* to all bishops, in Bingham, Book II. c. ii. § 10.]

<sup>8</sup> Leges Edw. Confess. c. 17: Selden. Notæ ad Eadmer. p. 155, l. 15.

<sup>9</sup> Rot. Parl. at Gloucester, n. 78, in nonnullis libris impressis c. 6 & 7. [If the parliament here mentioned be

that of the 2nd year of Richard II., there seems no expression quite equivalent to the above. The ‘Rolls’ of the time are very imperfect.]

<sup>10</sup> [Cod. Lib. I. Tit. ii. c. 24.] [For these and other proofs of the supremacy, enjoyed by the patriarch of Constantinople in his own diocese, see Bingham, Book II. c. xvii. § 21.]

<sup>11</sup> De Consideratione ad Eugenium, Lib. III. c. 3, [Opp. col. 879, l.]

<sup>12</sup> Rot. Parl. 1<sup>o</sup> Henry VI. § 33, [“fountaigne et miere de notre foy Christiane.”]

<sup>13</sup> Philip Scot’s Treatise of the Schism of England, pp. 165, 166.

jection to Rome, acknowledged even by our laws, ever from the conversion of our country under St Gregory"—had expressed in what particulars that subjection did consist, what those laws are, and where to be found. The truth is, as there is no doubt our ancestors in former times would not have joined with the synod of Gap, in causing so <sup>1</sup>disputable ambiguous a question, as that the pope is antichrist, to have been taught as the faith of the English church; so there is no question, but it hath been ever the tenet of it, *pontificem Romanum majorem aliquam jurisdictionem non habere sibi a Deo collatam in sacra scriptura in hoc regno Angliae, quam alium quemvis externum episcopum*—which our <sup>2</sup>historians do mention as what proceeded from the constitutions of the church and assent of emperors, not as of a thing in itself *juris divini*: insomuch as,

80. That proposition, <sup>3</sup>when it was propounded, 1534, in Henry the eighth's time in convocation, all the bishops without exception, (and of others only one doubted, and four placed all ecclesiastic power in the pope,) both the universities, and most of the monasteries and collegiate churches of England, approved and avowed as the undoubted opinion of the church of this nation in all ages. Neither can I see how it can be otherwise; for if the church of Canterbury <sup>4</sup>were *omnium nostrum mater communis sub sponsi sui Jesu Christi dispositione*, if it were *mater omnium Anglicanarum ecclesiarum, et suo post Deum proprio lætatur pastore*; that is, if the archbishop had no mediate spiritual superior but Christ and God; if the power the pope exercised over him within this realm were <sup>5</sup>*voluntate et beneficio*, gained, as I have shewed, by little and little, voluntarily submitted unto; it could be no other than *jure humano*—and then it must be granted, the church of England could not hold any necessity of being in subjection to the see or church of Rome, *jure divino*; as it is manifest they did not, in that

<sup>1</sup> "I will not undertake to maintain that the pope is antichrist, professing my weakness and ignorance of those prophetical scriptures to be so great, that I dare not be confident in my interpretations of them." Baxter's 'Explication' of his Tract, entitled 'Christian Concord,' p. 69, [Lond. 1653.]

<sup>2</sup> R. de Diceto, A.D. 607, 608; col. 437.

<sup>3</sup> Antiquit. Britan. p. 329, l. 22, etc. [ed. Hanov. 1605.]

<sup>4</sup> Gervas. Dorobern. col. 1663, l. 24: col. 615, ll. 60, 63. [Mat. Paris, p. 125, l. 15.]

<sup>5</sup> Epist. Radulph. Archiep. Cant. Calixto II. [Vid. Scriptores x. col. 1736, l. 1.]

they <sup>6</sup>sometimes acknowledged no pope, <sup>7</sup>otherwhiles shewed an intent of departing from his union, and the bishops as well as lay lords advised Anselm <sup>8</sup>*Urbani obedientiam abjicere, subjectionis jugum excutere, &c.* Neither could the church of England be any way possibly guilty of schism, adhering to their ghostly superior next and immediate under Christ Jesus. [But of this see more hereafter, cap. vi. § 6.]

As for the temporal profits the court of Rome received hence, though the denying them can be no just cause of such a spiritual imputation, especially on private men; yet certainly who will examine their beginning, as he shall find it to have been by the bounty or permission of our princes, so upon search he will perceive the kingdom went no farther than the common law, the precedent of former times, and such an exigency did force them to: of which therefore I shall add a word or two.

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<sup>6</sup> Eadmer. p. 25, l. 40.

<sup>7</sup> Mat. Paris, A. D. 1168, p. 107, l. 45: A. D. 1169, p. 111, l. 25. Vid. Epist.

Gilberti Londoniens. episc. apud R. de Hoveden, A. D. 1166, p. 501.

<sup>8</sup> Eadmer. p. 28, l. 33, etc.

## OF PAYMENTS TO THE PAPACY FROM ENGLAND.

THE vast sums the court of Rome did of late years upon several occasions export out of this kingdom, mentioned in the <sup>1</sup>statute of the 25<sup>o</sup> Henry VIII., are spoken of by several of our writers: and though some <sup>2</sup>have in general expressed how much the nation suffered in that kind [—and the commons, 1376, did shew <sup>3</sup>*qu'il n'y ad null si riche roi en toute la cristientee, qu'ad la quarte partie tant de tresore come ad ale hors de roialme d'Engleterre pur benefices de seint esglise peccherousement, par la manere sus dite, en empoverissement et destruction de roialme et de seinte esglise, par soefrance et defaut du conseil*]—yet none, that I know, in one tract did ever shew by what degrees the papacy gained so great a revenue. I have thought therefore that it will not be amiss to set down, how the pope came to have so great an influence over the treasure of the clergy in this land, by seeking out how and when the greatest of the payments made to him began, what interruptions or oppositions were met with, either at the beginning or in the continuance of them.

2. The first payment, that I have read of, which gave the pope an entrance as it were into it, was that bounty of our princes known to this day by the name of Peter-pence: and this as it was given for an <sup>4</sup>alms by our kings, so was it no otherwise received by the court of Rome; <sup>5</sup>*eleemosyna beati Petri, prout audivimus, ita perperam doloseque collecta est, ut neque mediam ejus partem hactenus ecclesia Romana suscepere*, saith Paschalis II. So that no question <sup>6</sup>Polydore Vergil very

<sup>1</sup> Statutes, 25<sup>o</sup> Hen. VIII. c. 21.

<sup>2</sup> Apud Mat. Paris, [Hist. Major] Epist. Universitat. A.D. 1245, p. 667, l. 36.

<sup>3</sup> [Rot. Parl. 50<sup>o</sup> Edw. III. § 99.]

<sup>4</sup> Vid. Epist. W<sup>mi</sup>. I. apud Baron.

Tom. XI. ad an. 1079, xxv.: et inter Lanfranc. Epist. vii. [p. 304.]

<sup>5</sup> Epist. Henrico I<sup>o</sup>, apud Eadmer. p. 113, l. 27.

<sup>6</sup> Polydor. Vergil. Anglice Histor. Lib. iv. p. 89, ll. 40, 43.

inconsiderately terms it *vectigal*, and others, who by that gift contend the kingdom became <sup>7</sup>*tributarium [vel] feudatarium sancto Petro ejusque successoribus*: for though the word *tributum* may perhaps be met with in elder <sup>8</sup>writers, yet never did any understand the pope by it to become a superior lord of the kingdom, but used the word metaphorically; as we do to this day term a constant rent a kind of tribute, and to those who pay it, and over whom we have in some sort a command, we give the title of subjects; not as being princes over them, but in that particular, being under us, they are for it styled our inferiors.

3. What Saxon king first conferred them, whether Ina, as <sup>9</sup>Ranulphus Cestrensis says report carried, or Offa, as <sup>10</sup>Jorvalensis, I will not here enquire, as not greatly material. <sup>11</sup>Polydore Vergil tells, some write Ethelwolphus continued it: with whom Bromton seems to concur. It is true, our historians remember he caused <sup>12</sup>three hundred *mancusas denariorum*—<sup>13</sup>Malmsbury [in which he is certainly out] renders it *trecentas auri marcas*, which was ten times the value of silver; as <sup>14</sup>another [that writes it was] *trecenta talenta*—to be carried every year from hence to Rome; which could be no other than the just application of Peter-pence: for amongst sundry complaints long after from <sup>15</sup>Rome, we find the omission of no payment instanced in, but of that duty only; neither do the body of the kingdom in their <sup>16</sup>remonstrance to Innocentius IV., 1246, mention any other as due from hence to Rome.

4. This therefore, thus conferred by our kings, was for the generality continued to the papacy; yet (to shew, as it were, that it proceeded only from the liberality of princes,) not without some stops. Of those in the times of William I. and Henry his son I have <sup>17</sup>spoke. Henry II. during the dispute

<sup>7</sup> Notæ ad Lanfranc. Epist. vii. [p. 347.]

<sup>8</sup> W. Malmesbur. [de Gestis Pontif. p. 226, l. 24.]

<sup>9</sup> Polychronicon, Lib. v. ad an. 728, [inter Scriptores xv. Vol. I. p. 247]: Vid. Joh. Bromton [Abbat. Jorvalens.] col. 802, l. 23.

<sup>10</sup> Col. 776, l. 36, etc.

<sup>11</sup> [Angl. Hist.] Lib. iv. p. 89, l. 44.

<sup>12</sup> Florent. Wigorn. A. D. 855, p. 584: Simeon. Dunelm. [col. 121, l. 36.]

<sup>13</sup> De Gestis Regum, Lib. II. c. 2, [p. 41, l. 2]: [but see § 6, infra.]

<sup>14</sup> Jorvalens. col. 802, l. 27.

<sup>15</sup> This appears by the epistle of William I. to Paschal II. before cited, and so to Henry I.

<sup>16</sup> Apud Mat. Paris, p. 698, l. 51, etc.

<sup>17</sup> Cap. iii. § 11: cap. iv. § 2.

with Becket and Alexander III. commanded the sheriffs through England, that <sup>1</sup>*denarii beati Petri colligantur, et serventur, quousque inde dominus rex voluntatem suam præceperit.* During the reign of Edward III., the popes abiding at Avignon, many of them French, their partiality to that side, and the 76 many victories obtained by the English begat the proverb, <sup>2</sup>*Ore est le pape devenu Franceys, et Jesu devenu Engleys, &c.*: about which time our historians observe, the king gave command <sup>3</sup>no Peter-pence should be gathered or paid to Rome. And this restraint, it seems, continued all that prince's time; for Richard II., his successor, at his beginning, caused John Wickliff, esteemed the most <sup>4</sup>knowing man of those times, to consider the right of stopping them; whose determination in that particular yet remains, entitled <sup>5</sup>*Responsio magistri Johannis Wicliif ad dubium infra scriptum, quæsitus ab eo per dominum regem Angliæ Richardum secundum et magnum concilium, anno regni sui primo.* The question follows, *Dubium est, utrum regnum Angliæ possit legitime, imminentे necessitate sue defensionis, thesaurum regni detinere, ne deferatur ad exteris, etiam domino papa sub pena censurarum et virtute obedientiæ hoc petente; et relicto viris peritis quid dici debet in ista materia, secundum jus canonicum, secundum jus Angliæ vel civile solum restat suadere partem affirmativam dubii, secundum principia legis Christi:* then shews, those payments being no other than alms, the kingdom was not obliged to continue them longer than stood with its own convenience, and not to its detriment or ruin—agreeing therein with that of divines, *extra casus necessitatis et superfluitatis eleemosyna non est in præcepto.*

5. But in the parliament held the same year, the question was concluded; for there this petition being preferred, <sup>6</sup>*que y puisse estre declaree en cest present parlement, si la charge de le denier saint pierre, appelle Rome-peny, serra leve des dites communes, et paie al collectour nostre saint pierre le pape ou*

<sup>1</sup> *Apud Mat. Paris, A. D. 1164, p. 103, l. 45: R. de Hoveden, A. D. 1165, p. 496, l. 53.*

<sup>4</sup> *Hen. de Knyghton, col. 2664, l. 66: col. 2644, l. 31.*

<sup>2</sup> *Hen. de Knyghton, col. 2615, l. 41.*  
<sup>3</sup> *Caxton's Chronicle, [Lib. ult. c. 2, fol. 392, b]: Stow's Chronicle, A. D. 1365, p. 266.*

<sup>5</sup> *In Fasciculo Zizaniorum MS. in Biblioteca Antistitis Armachani, fol. 59, b, col. 2.*

<sup>6</sup> *Rot. Parl. 1<sup>o</sup> Ric. 11. § 84.*

*noun*; the answer was, *Soit fait come devant ad este usee*—by which the use of them being again returned, did so remain till Henry the eighth's time. For though in a <sup>7</sup>council held at London, 1408, it was treated *de censu et obedientia papæ subtrahendis vel non subtrahendis*; yet that it passed farther than 77 words I have not observed. But king <sup>8</sup>Henry, 153<sup>4</sup>, took them so absolutely away, as though queen Mary repealed that act, and Paulus Quartus dealt earnestly with her <sup>9</sup>agents in Rome for restoring the use of them; yet I cannot find they were ever gathered, and sent thither during her time: but where some monasteries did answer them to the pope, and did therefore collect the tax, that in process of time became as by custom paid to that house; which being after derived to the crown, and from thence by grant to others, with as ample profits as the religious persons did possess them, I conceive they are to this day paid as an appendant to the said manors, by the name of 'smoke-money.'

6. Before I pass from this, one thing is not to be omitted—that however the pope had this as a due, and for that end his collector did abide in England; yet he might not raise the ancient accustomed proportion of the tax, nor in any kind alter the manner of taking it: for when Rigandus from the pope endeavoured that, he was straitly prohibited by Edward II. The <sup>10</sup>act itself is printed.

[The value these Peter-pence did amount to, in 130<sup>6</sup>, was only <sup>11</sup>two hundred pounds and twenty-nine shillings, as I have seen recorded, 35<sup>o</sup> Edward I., and now printed.] I have perused an old volume of MSS. belonging to the church of Chichester, [and found in it] a bull said to be of <sup>12</sup>Gregory the fifth's, that did proportion them after this manner, [somewhat differing from Mr Fox<sup>13</sup>]:

<sup>7</sup> Thom. Walsingham, A.D. 1408, p. 377, l. 36.

<sup>8</sup> Statutes, 25<sup>o</sup> Hen. VIII. c. 21.

<sup>9</sup> Historia del Concilio Tridentino [di Pietro Soave Polano,] Lib. v. [p. 401.]

<sup>10</sup> Fox, *Acts and Monuments* in Edw. II. [Vol. I. p. 420, col. 2, ed. 1684.]

<sup>11</sup> [35<sup>o</sup> Edw. I. *Petit. in Parliam. in Rot. Parl.* Vol. I. p. 220, b. The whole

passage is this: "Ensement, come pur le denier de saint Pierre, que les rois d'Engleterre donerent come en aumone a la court de Rome, soleit toujours estre paie a l'Apostoill, ou a ses procurateurs, un certeyn, c'est assavoir cc<sup>6</sup>. xxix s." etc.]

<sup>12</sup> Vid. *Concil. ed. Spelman.* [Tom. I.] p. 313.

<sup>13</sup> *Acts, &c.* Vol. I. p. 421, col. 1.

Episcop.	£.	s.	d.	Episcop.	£.	s.	d.
<i>Cant.</i> . . .	7	18	0	<i>Exoniensis</i> . . .	9	5	0
<i>London.</i> . . .	10	10	0	<i>Wigorniensis</i> . . .	10	5	0
<i>Roffensis</i> . . .	5	10	0	<i>Herefordens.</i> . . .	6	0	0
<i>Norwicensis</i> . . .	21	10	0	<i>Bathon.</i> . . .	12	0	0
<i>Eliensis</i> . . .	5	0	0	<i>Saribur.</i> . . .	17	0	0
<i>Lincolniensis</i> . . .	42	0	0	<i>Coventrensis</i> . . .	10	0	0
<i>Cicestrensis</i> . . .	8	0	0	<i>Eborac.</i> . . .	11	10	0
<i>Winton.</i> . . .	17	6	8		193	14	8

*Dat. apud Urbem Veterem x. Kalend. Maii, pontificatus nostri anno secundo.*

78 But this could not be the bull of Gregory V., who died about 997, before 'Ely was erected, or episcopal chairs placed in <sup>2</sup>Lincoln or Norwich. [I conceive it should be Gregory IX.]

7. The last article in the oath prescribed the clergy from the pope, of obedience to him, was, not any way to alienate the possessions of their houses *inconsulio Romano pontifice*. Whether this clause were inserted when, 1115, it was first required of <sup>3</sup>Ralph the archbishop of Canterbury, I have not been able to certify myself; and am apt to believe it was not: for though we find it in <sup>4</sup>Matthew Paris, when it was first imposed on abbots and bishops, yet that was after the court of Rome had tasted the sweetness of taxing other churches; neither is it in any of those conditions mentioned by <sup>5</sup>Diceto. But whenever it came in, it implying a right of alienating the possessions of religious houses and churches, with the papal licence, bred an opinion, that without his assent there could be no good sale made of their estates, by any temporal or spiritual power whatsoever, though with their own concurrence: and the court of Rome grew to maintain, <sup>6</sup>'That being a mother, she ought to be relieved by her children.' <sup>7</sup>Gelasius II. in his distress,

<sup>1</sup> Florent. Wigorn. A.D. 1109, p. 654, et seqq.

<sup>2</sup> "Remigius circa ann. 1080, trans-  
tulit sedem episcopalem de Dorkestra ad  
Lindocolniam." W. Malmesbur. [de  
Gestis Pontif. Lib. iv. p. 290, l. 28.] et  
"Herebertus circa 1086, de Tettfordia ad  
Norwic." [Ibid. Lib. II. p. 239, l. 7.]

<sup>3</sup> Cap. iii. § 50.

<sup>4</sup> Vitæ Abbatum, p. 140, l. 27: Hist.  
Major, p. 414, l. 26.

<sup>5</sup> A.D. 1191, col. 663, l. 6.

<sup>6</sup> Mat. Paris, A.D. 1226, p. 328, l. 13.

<sup>7</sup> Orderic. Vitalis, [Eccl. Hist. Lib.  
xii.] p. 846, c.

1118, is said to have desired a *Normannica ecclesia subsidium orationum, et magis pecuniarum*: but it seems the Norman church did not then at all condescend to any; for the French agent in the <sup>8</sup> *Lugubri Querimonia* (of which before) mentions him amongst divers others who, expelled Italy, fled into France for succour, yet *non in aliquo gravaverunt ecclesiam Gallicanam, nec dando beneficia, nec petendo subsidium pecuniae vel armorum, sed spiritualibus armis, scilicet lacrymis et orationibus, quae sunt arma ministrorum Christi, maluerunt esse contenti, &c.* So that certainly if any collection were made for Gelasius, it was so private, public notice was not taken of it.

8. The first extraordinary contribution raised by allowance 79 for the pope's use in this kingdom, I take not to have been before <sup>9</sup> 1183, when Lucius III., at odds with the citizens of Rome, not any ways able to resist their fury, sent to Henry II. *postulans ab eo et a clericatu Anglie auxilium.* The matter was taken into consideration, and for the precedent, it was not thought fit any thing should be given as from the clergy, but that they might raise a supply amongst themselves for the king, without permitting a foreign agent to intermeddle; and his majesty might with that relieve the pope as he should see occasion. But take it in the historian his own words: <sup>10</sup> *Consuluit rex episcopos suos et clerum Anglie de petitione summi pontificis: cui episcopi et clerus consuluerunt, ut ipse secundum voluntatem suam et honorem faceret auxilium domino papae, tam pro se[ipso] quam [pro] illis; quia tolerabilius esset, et plus placeret eis, quod dominus rex, si vellet, accepisset ab eis recompensationem auxilii illius, quam si permisisset nuncios domini papae in Angliam venire, ad capiendum de iis auxilium; quia, si aliter fieret, posset verti in consuetudinem ad detrimentum regni. Adquievit rex consilio eorum, et fecit auxilium magnum domino papae in auro et argento.* The judicious reader may observe hence things very remarkable: as, that the king did in points concerned the pope consult with the English church, and followed their advice; the great care the

<sup>8</sup> Mat. Paris, *Additamenta MS. ubi supra*, c. iii. § 68, [fol. 127, b, col. 2.]

<sup>9</sup> [For that Diceto mentions, at the end of 1173, collected by Nicholas, a sub-deacon here, in respect of the schism the church then lay under, I take to have

been eleemosynary, on entreaty only from some particular persons, not by public authority.]

<sup>10</sup> R. de Hoveden, A.D. 1183, p. 622, l. 17, etc.

clergy took to avoid any sinister consequence in future, and therefore did themselves give to the prince, as to whom it was due from them, and not to the pope, who by custom might come to claim it: as indeed he did after step so far, as to prohibit their giving the king at all, without <sup>1</sup>his licence, endeavouring the gaining a supremacy over them as well in temporals as spirituals, who hitherto had not meddled with collections of that nature.

For the <sup>2</sup>same Henry, about seventeen years before (after 80 the example of the French), did cause a supply be made for the relief of the eastern church; but I do not find it to have been either upon any motion from Rome, or any part of what was so levied to have been converted thither.

9. But the former, granted 1183, passing with so great circumspection, persuaded the popes not to think fit suddenly (as it seems) of attempting the like; yet that the church of England might not be unaccustomed to payments, they sometimes exhorted Christians to the subvention of the Holy Land, and thereupon did distribute spiritual indulgences (which cost them not a farthing), and procured princes to impose on their subjects for that end. So did <sup>3</sup>Clement III. or rather Gregory VIII., about 1187, stir up Henry II. and Philip Augustus; <sup>4</sup>Innocentius III., king John: and, as a general superintendent over the clergy, did then intromit himself and his agents in the raising of it, and so did convert some good proportion to his own use; insomuch as Johannes Ferentinus, sent hither, 1206, from the same Innocentius III., <sup>5</sup>carried hence a good quantity—upon which king John wrote unto the pope, 1207, *quod ubiores sibi fructus proveniant de regno Angliae, quam de omnibus regionibus citra Alpes constitutis, &c.* [And the same <sup>7</sup>author remembers in the year 1216, Walo the pope's legate to have raised fifty shillings from each cathedral and religious house for procurations; and likewise that he did sequester and apply to

<sup>1</sup> [Liber Sextus Decretal. Bonif. VIII.] Lib. III. Tit. xxiii. c. 3: Vid. Hen. de Knyghton, col. 2489, l. 37.

<sup>2</sup> Gervas. Dorobern. A. D. 1166, col. 1399, l. 7.

<sup>3</sup> Gulielm. Neubrigensis Rerum Anglicarum Lib. III. c. 22, et seqq. [pp. 434, 435, et seqq.]: R. de Hoveden, A. D.

1187, p. 637, etc.: Gervas. Dorobern. col. 1552, l. 11, etc.

<sup>4</sup> Mat. Paris, A. D. 1201, p. 206, l. 54: A. D. 1202, p. 208, l. 12.

<sup>5</sup> Ibid. A. D. 1206, p. 214, l. 34.

<sup>6</sup> Ibid. p. 224, l. 26.

<sup>7</sup> [Ibid. p. 286, l. 7.]

his own, or the use of such as were with him, the benefices of all such of the clergy as adhered to the French.] Yet truly, to raise any considerable sum of money from the whole body of the clergy, for support of the papal designs, I do not find any great attempt before Gregory IX., 1229,<sup>8</sup> demanded a tenth of the moveables, of both lay and ecclesiastics : to which the temporal lords would not at all assent, *nolentes baronias vel laicas possessiones Romane ecclesiae obligare*; and the clergy were unwillingly induced to the contribution. The pope thus entered, meddled no more with the lay, but of <sup>9</sup>the clergy eleven years after he demanded by his legate a fifth part of their goods. Many meetings were had about it : <sup>10</sup>they shewed the king, they held their baronies of him, and could not without his assent charge them ; that having formerly given a tenth, this 81 of a fifth might create a custom : and at a meeting in Berkshire exhibited sundry solid reasons (too long to be here repeated) against the contribution. But nothing would serve ; the king made for it, and the archbishop out of private ends paying it, they were in the end forced to yield such a supply, as at his departure the year following it was said, <sup>11</sup>there did not remain so much treasure in the kingdom, as he had in three years extorted from it, the vessels and ornaments of churches excepted.

10. But neither the paying it with so great reluctance, nor the <sup>12</sup>remonstrance preferred in the council of Lyons, 1245, from the body of the kingdom, of the several exactions the nation lay under from Rome—and likewise <sup>13</sup>to the pope himself, the year following—could any way stop the proceedings ; but Innocentius IV., 1246, <sup>14</sup>invented a new way, to charge every religious house with finding and paying a quantity of soldiers for his service in the wars for one year—which being required from both the English and French, produced here those prohibitions in the same author against raising any *tallagium* or *auxilium*. But the French caused their agent to use a serious expostulation in the business ; which, because it is not printed, I shall deliver at large as I <sup>15</sup>find it : *Nuncii de novo accesserunt,*

<sup>8</sup> Ibid. p. 361, l. 2, l. 48 : p. 362, l. 9.

<sup>9</sup> Ibid. A.D. 1240, p. 526, l. 20.

<sup>10</sup> Ibid. p. 534, l. 8, l. 39.

<sup>11</sup> Ibid. A.D. 1241, p. 549, l. 21.

<sup>12</sup> Apud Mat. Paris, p. 666, l. 51, etc.

<sup>13</sup> Apud Mat. Paris, A.D. 1246, p. 698,

l. 40, l. 51, etc.

<sup>14</sup> Ibid. p. 701, l. 56 : p. 707, l. 30 : p. 708.

<sup>15</sup> In Lugubri Queremonia, Addit. Mat. Paris, MS. de qua supra, c. iii. § 59, 67, [fol. 127, a, col. 2.]

*nova gravamina addentes supradictis: nuper enim mandavistis ecclesiis, ut quia persecutor vester ad partes istas venturus est, mittant vobis militiam munitam ad resistendum ei, quia non est consilium cedere venienti; super quo satis excusabiles sunt ecclesiae, quia non habent militiam, nec est in parte eorum mittere quod non habent. Quos etiamsi haberent et mitterent, non est tutum confidere de ipsis. Nec scitur etiam de illo, utrum venturus sit, quia etiamsi veniret, praferendum esset (ut videretur) consilio humano consilium Domini, qui dicit, Si persecuti fuerint vos in unam civitatem, fugite in aliam, &c.*

82 And, about the same time, he <sup>1</sup>attempted the making himself heir to any clerk that should die intestate; and the year <sup>2</sup>following received from the clergy eleven thousand marks, *exceptis exemptis et tribus clericis*, as an addition to six thousand he took the <sup>3</sup>year before.

11. I shall not here take upon me to repeat all the times and ways, by which the subject had his purse thus drained—the labour would be too great, and the profit little: it shall suffice to note, the court of Rome, by much struggling, overcame in the end all difficulties, and did arrive to that height, the <sup>4</sup>commons were forced in parliament, 1376, to prefer this petition: *Si tost come le pape voet avoir monoie pur meintenir ses guerres de Lombardie, ou aillours, pur despendre, ou pur raunson' ascuns de ses amys prisoners Fraunceys pryses par Engleys, il voet avoir subside de clergie d'Engleterre. Et tantost ce luy est grantez par les prelatz, a cause que les evesques n'osent luy contrestere, et est leve del clergie sanz lour assent ent avoir devant. Et les seculers seigneurs n'y preignent garde, ne ne font force comment le clergie est destruit, et la monoie de roialme malement emporte.*

12. And indeed the kingdom had great reason thus to complain. See one of many examples that may be alleged: in the year 1343, the 17<sup>o</sup> Edward III., Clement VI. sent hither to provide for two cardinal priests, one out of the province of York, the other Canterbury, in spiritual livings, to the value of a thousand marks a-piece, <sup>5</sup>*sur une si generale et couverte manere, que la somme passera x. m. marcs avant qe le doun soit*

<sup>1</sup> Mat. Paris, A. D. 1246, p. 707, l. 2:  
“ Ut si clericus ex tunc decederet intestatus, ejusdem bona in usus domini papæ converterentur.”

<sup>2</sup> Mat. Paris, p. 730, l. 16.  
<sup>3</sup> Ibid. p. 715, l. 16.  
<sup>4</sup> Rot. Parl. 50<sup>o</sup> Edw. III. § 107.  
<sup>5</sup> Ibid. 17<sup>o</sup> Edw. III. § 59.

accepte. But the state would not endure this, <sup>6</sup>but chasing their agents out of the kingdom, the king sent through every county, <sup>7</sup>*ne quis ab eo tempore et deinceps admitteretur per bullam [ad aliquod beneficium, nec recipetur] sine licentia speciali regis.* And a little after, the parliament held 20<sup>o</sup> Edward III., 1346, the commons yet more plainly, <sup>8</sup>*Nous ne volons soeffrir que nul paiement soit fait as cardinalx, pour lour demoere en France, de treter [hors du roialme], &c.* And soon after they represent this very particular of two thousand marks to be <sup>9</sup>*en anentissement de la terre, and encresce de noz enemys;* and therefore *qu'ils ne soient en nulle manere soeffertz.* In both which his majesty gives them content. 83

13. Neither did the papacy, having gained the possession, as I may term it, of taxing, impose these payments for one year only upon foreign churches, as at first, but for six successively one after the other. So did <sup>10</sup>John XXI., in the year 1277, and <sup>11</sup>Clement V., in the council of Vienne, 1311, pretending an employment against the infidels; but procuring princes to join with them in the collecting, that it might be paid with more facility—and therefore gave them either the <sup>12</sup>whole, or part of what was so raised; from whence no doubt grew that proverb so full of infamy, <sup>13</sup>"that the king and pope were the lion and wolf"—did in the end, as we have heard, convert the treasure to the ransoming their friends, the maintenance of their wars, and such-like mundane ends. The <sup>14</sup>French affirm, the first of their kings who shared with Rome in these levies, to have been Charles le Bel, about 1326—which if it were, our kings were before them—but such as succeeded knew there as well as elsewhere, how to apply what was thus gathered wholly to themselves, wiping the popes clean out: and notwithstanding all <sup>15</sup>complaints in that kind from Rome, <sup>16</sup>Duarenus observes the crown of France to have none more certain or speedy revenue, than that is thus raised of the ecclesiastics.

<sup>6</sup> Thom. Walsingham, p. 161, l. 23.

<sup>7</sup> Hen. de Knyghton, col. 2583, l. 50.

<sup>8</sup> Rot. Parl. 20<sup>o</sup> Edw. III. § 33.

<sup>9</sup> § 35.

<sup>10</sup> W. Thorn, col. 1926, l. 29.

<sup>11</sup> Thom. Walsingham, p. 99, l. 14.

<sup>12</sup> Vid. Mat. Paris, [Hist. Major] A.D.

1252, p. 849, l. 12.

<sup>13</sup> Ibid. A.D. 1255, p. 917, l. 39.

<sup>14</sup> Chronicon Joan. Tilii, de Regibus Francorum, ad finem Pauli Aemylii, de Rebus Gestis Francorum.

<sup>15</sup> Vid. Histor. del Concilio Tridentino di Pietro Soave, Lib. v. p. 408.

<sup>16</sup> De Sacros. Eccl. Ministr. ac Beneficiis, Lib. vii. c. 1, sub fin. [ed. Aurel. 1608.]

14. But these exactions grew so burdensome, Martin V. at <sup>1</sup>the council of Constance, 1417, was constrained to establish, *Nullatenus imponantur generaliter super totum clerus, nisi ex magna et ardua causa, et utilitate universalem ecclesiam concernente, et de consilio et consensu et subscriptione fratrum nostrorum, sanctæ Romanae ecclesiae cardinalium et prælatorum, quorum consilium commode haberi poterit; nec specia-lier in aliquo regno vel provincia, inconsultis prælatis ipsius regni vel provinciæ, &c.* Upon which decree, a supply of the tenth being <sup>2</sup>twice demanded, viz. 1515 and 1518, by Leo X. against the Turk, the English clergy denied them both times. Thus the papacy by little and little gained in England the power of sometimes laying that tax on churchmen, is to this day known by the name of a tenth, [which yet was answered the pope only out of those lands the ecclesiastics here possessed before the 20th of Edward I.; which out of respect were discharged of such payments to the king, which those of later acquisition were <sup>3</sup>subject to, and] which became limited, as we have seen; and after by <sup>4</sup>statute 26<sup>o</sup> Henry VIII. transferred to the king to be paid annually unto him—as were likewise the first-fruits or profits of one year, commonly called annates, (for I take them to be the same), of all spiritual livings: of which a word.

15. The first raising of them seemeth to have been, that when the court of Rome did confer on clerks and chaplains, residing with them, benefices in the dioceses of others, they who thus obtained from that chair not only the spiritual of ordination, but likewise the temporal of profit, did at first, either to shew their gratitude, or for that the pope would have it so, voluntarily give the whole or some part of the first year's revenue to the court, by whose favour they received all: and the papacy, perceiving the gain did thus accrue, laboured to extend it farther; was in some sort imitated by other bishops; and for avoiding the shew of simony, covered what was thus took with the names of *annates, vacante, <sup>5</sup>minuta servitia*

<sup>1</sup> Concil. Constant. Sess. xlivi. 'de Decimis,' etc.: [in Labbe, Tom. XII. 255.]

<sup>2</sup> Herbert's Life of Hen. VIII. pp. 57, 79, et Bullæ sive epistolæ Leonis de eadem re, quas vidi manuscript.

<sup>3</sup> [Rot. Parl. 20<sup>o</sup> Edw. III. § 44.]

<sup>4</sup> Statutes, 26<sup>o</sup> Hen. VIII. c. 3, § 1.

<sup>5</sup> "Minuta servitia" were small payments, such as had any expedition in the court of Rome were liable unto, as fees to certain officers or servants of

scripturæ, and such-like. But as St Gregory <sup>6</sup> tolerating only a liberality to be given after the reception of the pall, his successors knew how to turn it to a revenue; so these, however at first begun, did afterwards become annually a profit. What others did in this kind, is not necessary to that I treat of; but upon the practice of the church of Rome, 25<sup>o</sup> Edward III., the commons <sup>7</sup> exhibit this petition to the king: *Prie sa commune [que pleise a notre seigneur le roi ...] de veer et regarder [un tres grande meschief et destruction que se monstre ...]; comment le pape ne soleit avant ces heures faire reservations de nul benefice de saint esglise, si'il ne fust de benefice de ses chapeleins, ou des clercs qui murerunt en la court de Rome; et ore tard et de novel, pur covetise d'avoir les primers fruitz, et les autres profitz qui en dependent, ad reservee, et reserve de jour en autre, a sa collation, generalement et especialment, si bien abbeies et priories, come toutz les autres grantz beneficez d'Engleterre, qui sont de patronage espiritel. Et generalement il ad reservee ore tard toutes les dignitez d'Engleterre, et provendres en esglises cathedrals, et les donne si bien as alienes come as denzeins; et issint ad le pape touz les primers fruitz des ditz benefices.* By which it appears, the papacy, that formerly took the first-fruits of only such livings as men died possessed of in the court of Rome, had an intent of extending them to all were *de patronage espiritel*: but whether an active king stopped upon this the endeavours of that see, or the popes, wise men, thought it not fit to make too sudden an irruption into the profits of other churches, is not greatly material; <sup>8</sup> but twenty-five years after, the commons again represent the pope's collector, *Ore de novel cest an, et ne l'prist unques devant, a l'oeps du pape, des primers fruytz de chescun benefice dont il fait provision ou collacion, except des graces grantez as povres, ou il ne soleit prendre fruytz nulles fors que soulement des benefices vacantz en la courte de Rome.*

16. But in whose time these first-fruits began to be taken,

the pope, called therefore *familiares domini papæ*; as of late, such as renewed leases of the archbishop of Canterbury did to his secretaries and others of his retinue. A.D. 1389, there was paid four of these to the pope, and one to the dependents on the cardinals. *Thorn, Chro-*

*nica, col. 2194, l. 31.* The rest have no difficulty.

<sup>6</sup> *Epist. Lib. iv. c. 88, Indict. xiii.*

<sup>7</sup> *Rot. Parl. 25<sup>o</sup> Edw. III. Octav. Purif. § 13.*

<sup>8</sup> *Ibid. 50<sup>o</sup> Edw. III. § 108.*

there seems to me some difference amongst writers. Theodoricus à Niem—who lived in the court of Rome, secretary (as some write) to Gregory XI., or rather, as it seems to me, of Urban VI.—<sup>1</sup>says, *Boniface IX. circa decimum annum sui regiminis, viz. 1399, primos fructus unius anni omnium ecclesiarum cathedralium et abbatarum vacantium sue camerae reservavit, ita quod quicunque extunc [in archiepiscopum vel episcopum aut abbatem] per eum promoveri voluit, ante omnia 86 cogebatur solvere primos fructus ecclesiae, vel monasterii cui præfici voluit.* With whom <sup>2</sup>Platina agrees: *Annatarum usum primus imposuit, (Bonifacius IX.) hac conditione, ut qui beneficium consequeretur dimidium annui preventus fisco apostolico persolverent. Sunt tamen qui hoc inventum Johanni XXII. ascribunt.* The same likewise <sup>3</sup>Polydore Vergil affirms, though he speak as if some thought them of an higher time, which under favour I do not credit; for <sup>4</sup>Nicholaus de Clemangiis, in the treatise he writ concerning them, saith, that when such reservations fell into consideration in the council of Constance (he lived whilst it sate) no beginning could be assigned before John XXII. began them, *pro certo passagio ultramarino, et quibusdam aliis necessitatibus suis.* To which I may add the opinion of the wise and learned <sup>5</sup>cardinal d'Ossat: *Jean XXII., François de nation, dont il me déplaist, fust le premier qui outre les taxes, et annates qu'il inventa, &c.* And Ranulphus Cestrensis, one of that time, <sup>6</sup>saith of him: *Beneficiorum per mortem seu resignationem vacantium, sive per translationem, primos fructus reservavit, ita ut rector institutus taxationem beneficii sui aut residuum taxationis acceptaret: ex qua caute la innumerabiles thesauri ad manus papæ devenerunt—and Knighton himself: <sup>7</sup>Reservavit curiae omnes primos fructus vacantium ecclesiarum, sive per mortem sive per resignationem, &c.* <sup>8</sup>Walsingham, 1316: *Summus pontifex reservavit camerae sue primos fructus beneficiorum omnium in Anglia per trien-*

<sup>1</sup> *De Schismate Universalis*, Lib. II. c. 7, [ed. Argentorati, 1609.]

<sup>2</sup> *De Vitis Pontif. in Bonifac. IX.* [p. 527.]

<sup>3</sup> *De Rerum Inventoribus*, Lib. VIII. c. 2, [p. 463.]

<sup>4</sup> *Tract. de Annatis non solvendis, in Fasciculo Rerum Expetendarum, etc. fol. 189, [b, e; ed. 1535: p. 378, ed. Brown.*

1690]; et inter opp. ejus, p. 83, col. 2, [Lugduni, 1613.]

<sup>5</sup> *Lettres du Cardinal D'Ossat*, cxxvi. [p. 686.]

<sup>6</sup> *Polychronicon*, Lib. VII. c. 42, apud De Knyghton, col. 2534, l. 8, etc.

<sup>7</sup> *Ubi supra*, col. 2565, l. 47.

<sup>8</sup> *Hist. Angl. A.D. 1316*, p. 108, l. 42.

*nium vacantium*: which not occurring of any pope before, I cannot ascribe other to have begun them than he; who though, in a <sup>9</sup>bull dated the fifth January, <sup>4°</sup> *pontificatus*, he mention *fructus redditus, proventus, primi anni beneficiorum*, yet by the doubts he there resolves, shews the practice of them then <sup>87</sup> newly brought into the church. But whereas the <sup>10</sup>writers before named agree, the English, of all nations, never received in this the full extent of the papal commands, I conceive it to arise from the good laws they made against them: of which before, and after.

17. It is hardly credible how great a mass of treasure were by these ways sent hence into Italy. <sup>11</sup>The revenues the Italians were possessed of in England, 1245, are accounted not less than sixty thousand marks; A.D. <sup>12</sup>1252 it was thought they did amount to seventy thousand (all which for the most drained thither); and in <sup>13</sup>the parliament held about an hundred years after, the commons shew, what went hence to the court of Rome, *tourne a plus grande destruction du roialme que toute la guerre nostre seigneur le roi*: yet, notwithstanding so many statutes as were made by that prince, for moderating the excesses in this kind, the fiftieth they complain, (I shall give it contractedly) <sup>14</sup>“the pope’s collector here held a receipt equal to a prince or duke; sent annually to Rome from the clergy, for procurement of abbeys, priories, first-fruits, &c. twenty-thousand marks, some years more, others less; and to cardinals and other clerks holding benefices in England was sent as much, besides what was conveyed to English clerks remaining there to solicit the affairs of the nation: upon which they desire his majesty, no collector of the pope may reside in England.”

18. But the king, as it seems, not greatly complying with their desires, the <sup>15</sup>year following they again instance, “that certain cardinals, notorious enemies, had procured a clause *de anteferri*, to certain benefices within the provinces of Canterbury and York; that the pope’s collector was as very an enemy to this state as the French themselves; that his house-keeping

<sup>9</sup> Extravagant. Decret. Commun. Lib. III. de Præbend. et Dignit. c. 11, [ed. Taurin. 1620.]

<sup>10</sup> Nicolaus de Clemangiis, Platina, Polydore Vergil.

<sup>11</sup> Mat. Paris, p. 658, l. 49: p. 667, l. 36.

<sup>12</sup> Ibid. p. 859, l. 48.

<sup>13</sup> Rot. Parl. 25<sup>o</sup> Edw. III. Octav. Purif. § 13, A.D. 1361.

<sup>14</sup> Rot. Parl. 50<sup>o</sup> Edw. III. §§ 105, 106.

<sup>15</sup> Rot. Parl. 51<sup>o</sup> Edw. III. §§ 78, 79.

here at the clergy's cost was not less than three hundred pounds 88 by the year; that he sent annually from hence beyond seas, <sup>1</sup>at one time twenty thousand marks, sometimes twenty thousand pounds; and, what was worse, espied the secrets of the kingdom, vacations of benefices, and so daily made the certainty known to the said court; that he did now raise for the pope the first-fruits of all dignities and other smaller promotions, causing by oath to pay the true value of them, surmounting the rate they were formerly taxed at; which now in the very beginning ought to be crushed, &c. Upon which considerations they desire all strangers, clerks, and others (excepting knights, esquires, merchants, artificers) might suddenly avoid the kingdom; no subjects, without the king's express license, to be proctors, attorneys, farmers to any such alien, under the pain, after proclamation made, of life, member, loss of lands and goods, and to be dealt with as thieves and robbers; no money during the wars to be transported out of the kingdom by exchange or otherwise, on the forfeiture of it." But to this the answer only was, *Se tiegnent les estatutz et ordenances ent faites.* Whereupon, the <sup>2</sup>next parliament, the commons preferred again three petitions, touching, (1) The payment of <sup>3</sup>first-fruits taken *come due a la chaumbre notre seint pierre*, yet not used in the realm before these times, was contrary to former treaties with the pope, &c. (2) Reservations of benefices. (3) By that way bestowing them on aliens, who sundry times employed the profits of them towards the ransoming or arraying their friends, enemies to the king. Of all which they desire his majesty to provide remedy; as also that the petitions in the two last parliaments (of which before) might be considered, and convenient remedy ordained. To which the answer is, *Les seigneurs du grant conseil ordeigneront due remede sur la matire comprise en cestes trois billes precedantz.* And here I take the *grant conseil* to be the privy council, not the lords in or out of parliament; called the grand council for the greatness of the affairs 89 fell within their cognizance, and <sup>4</sup>named, the fifth year of Henry

<sup>1</sup> A la foitz xx. m. marcs; a la foitz xx. m. *ii.*

episcopatus.

<sup>2</sup> Rot. Parl. 1<sup>o</sup> Ric. II. §§ 66, 67, 68.

<sup>4</sup> Rot. Parl. 5<sup>o</sup> Hen. IV. § 37; vid.

<sup>3</sup> What each bishop paid to the see of Rome for first-fruits, vide Godwin, [de Præsulibus] Catal. in fine unius cuiusque

10<sup>o</sup> Ric. II. § 20, 13<sup>o</sup> Ric. II. § 6; 7<sup>o</sup> and 8<sup>o</sup> Hen. IV. § 31; 11<sup>o</sup> Hen. IV. § 39.

IV., to consist only of six bishops, one duke, two earls, and other; in all to the number of twenty-two.

19. What order they established I have not met with; it is manifest not to have been such as gave the satisfaction hoped for, by the commons<sup>5</sup> renewing in effect both 3<sup>o</sup> and 5<sup>o</sup> Richard II. the same suits: and the inconveniences still continuing,<sup>6</sup> in the year 138<sup>o</sup>, 10<sup>o</sup> Richard II., William Weld was chosen abbot of St Augustine's, in the place of Michael, newly dead; who troubled with a quartan ague, the French and Dutch on the seas, the king inhibited his going to Rome for confirmation, [in former times held a good excuse<sup>7</sup>], &c. . He thereupon employs William Thorn—from whose pen [as the man it seems fittest for the public employments of the house in that age] we have the relation—hoping to be excused himself of the journey; who shewing the sufferings of the house, the miserable state he must leave it in, that he would expose it *irrecuperabili casui et ruinæ*, that the king had commanded his stay—was in the end told by the pope (after great means by him used),<sup>8</sup> *Rex tuus præcipit quod non veniat electus ille, ego volo quod compareat et examini se subjiciat*; and again, after yet more earnest solicitation, *Quia audivimus turbationem inter regem et barones suos, (the fittest time to contest with a prince), et multa sinistra de persona electi, et quod cederet Romanæ ecclesiæ in 10<sup>o</sup> præjudicium, absque personali comparitione non intendimus ipsum confirmare, ne daretur posteris in exemplum.* The cause hanging three years in suspense, the abbot in fine was forced to appear in Rome for his benediction, and returned with it not to his house, till about the end of March, 1389, the twelfth of Richard II. After which the next<sup>11</sup> parliament obtained the statute of *præmunire* against the pope's conferring any benefice within the said kingdom from the twenty-ninth of January then ensuing; and no person to send or bring any summons, sentences, or excommunications against any person for the execution of the said statute of provisors, on the pain of being arrested and put in prison, forfeiture of all his lands, tenements, &c., and 90 incurring the pain of life and member.

<sup>5</sup> Rot. Parl. 3<sup>o</sup> Ric. II. § 37 : 5<sup>o</sup> Ric. II. in crastina Animarum, §§ 90, 91.

<sup>6</sup> W. Thorn, col. 2184, et seqq.

<sup>7</sup> [Johan. Hagust. col. 265, l. 27.]

<sup>8</sup> W. Thorn, col. 2186, l. 40, etc. : [col.

2178, l. 58.]

<sup>9</sup> Ibid. col. 2187, ll. 62, 63: [col. 2188, l. 7, etc.]

<sup>10</sup> Cap. iii. §§ 13, 14.

<sup>11</sup> Statutes, 13<sup>o</sup> Ric. II. Stat. ii. c. 2 & 3.

[And the twenty-sixth of January, John Mandour, clerk, was by the same <sup>1</sup> parliament commanded "neither to pass the seas himself, nor to send or attempt any thing at Rome, against one upon whom his majesty had conferred the archdeaconry of Duresme, as what was in prejudice of the king, his laws and statutes."] So that we may see the intent of this law to have been, as <sup>2</sup> Polydore Vergil rightly interprets it, a confining the papal authority within the ocean, and for the frequent exactions of Rome, *ut nulli mortalium deinceps liceret, pro quavis causa, agere apud Romanum pontificem; ut quispiam in Anglia ejus auctoritate impius religionisque hostis publice declararetur... neve exequi tale mandatum, si quod ab illo haberet.* To which law, three years after, some other <sup>3</sup> additions were made; and none of these were ever repealed by queen Mary, who, though she did admit a union with the church of Rome, yet in restoring the pope's supremacy the state used so <sup>4</sup> great caution, as it ever seemed to me rather a verbal than real admission of his authority. Which it seems her majesty well understood, in that she would never permit Peto to appear before her in the quality of either cardinal, bishop, or legate, to all which he was preferred by Paulus IV.; [suffered none from Rome to enter her kingdom, intercepted all letters coming thence. And whereas the pope, pretending a suspicion of cardinal Pole in point of religion, (abrogating his legatine authority here,) required his presence in Rome; she told his agent, if that were so, informing her of the grounds, she would cause him to answer in an ecclesiastic court, and be tried by the laws of the kingdom of England, but admitted not at all his trial beyond seas].

[But where a modern <sup>5</sup> writer tells us it was only to gain time (which did never expire), till she could inform the pope "that the same was not expedient," and no other than "catholic princes do, when they doubt any thing will proceed against them from the said see apostolic, until matters can be compounded;" truly for my part I believe him, and that no prince in christendom but if he should attempt against him the same was acted against ours, but he would have proceeded in the like

<sup>1</sup> [Vid. Rot. Parl. 13<sup>o</sup> Ric. II. § 9.]

<sup>2</sup> Angl. Hist. Lib. xx. p. 417, 1. 32,  
etc.

<sup>3</sup> Statutes, 16<sup>o</sup> Ric. II. c. 5.

<sup>4</sup> 1<sup>o</sup> & 2<sup>o</sup> Phil. & Mary, c. 8: see  
Coke's Institutes, Part III. p. 127.

<sup>5</sup> [Persons, in his Answer to Coke's  
Reports, p. 336.]

manner—for we see the republic of Venice did, and the king of Spain since, not much otherwise—in stopping all intercourse between Rome and his dominions. And where he <sup>6</sup>says “they did not contemn the pope’s authority,” I confess it: for no man contemns what is truly another’s, who stops only his encroachments; which is the case of this nation. But, by his favour, it fully proves the pope had no power of meddling here, but as the prince gave way unto it, and her majesty refusing herself to permit a subject to be judged by no foreign constitutions or courts but the ecclesiastical laws of this kingdom, shews plainly they were not tied to attend the pope’s, or be called out of the kingdom to a foreign judicature, but, at least, as the state did allow.] And whereas <sup>7</sup>some would excuse the former and such-like laws, as passed by consent and toleration from Rome, or at least by the importunity of the lay: that I have said doth enough shew the papal care, in suffering nothing, they could stop, might any way prejudice that see. And for the bishops’ passing the 16<sup>o</sup> Richard II., pressed by the temporalty, it is so much otherwise, as that statute is enrolled on the desire of the archbishop of Canterbury, Rot. Parl. 16<sup>o</sup> Richard II. § 20, in fine.

20. In the same parliament, the commons, as it seems, much exasperated against the pope’s collector, do yet farther <sup>8</sup>petition, he may have the warning of forty days given him to be gone out of the kingdom, *sur peyne d’estre pris come enemy du roy et ranceone: et que desore en avant null collectour soit demurant deinz le roialme d’Engleterre, s’il ne soit lige du roi; et que mesme cesty face null rien a contraire de l’estatut de provisours fait en cest present parlement, sur peine de vie et de membre sanz perdon, considerant les meschiefs et damages que les collectours estranges ount faitz dedeinz le roialme devant ces hures.* But to this the answer only is, *Le roy s’avisera.*

21. After these petitions and laws, however they sufficiently barred the court of Rome from meddling with this church, and enough shewed the right of the kingdom in reforming itself, and redressing all inconveniences came unto it from beyond sea; yet the king having a power of dispensing with those statutes,

<sup>6</sup> [Ibid.]

<sup>7</sup> Catholicke Devine, [as above], cap.

xii. § 37, p. 305: § 49, p. 311.

<sup>8</sup> Rot. Parl. 13<sup>o</sup> Ric. II. § 43.

this mischief ensued : divers who easily obtained letters of provision to a good benefice from the papacy, sued to the king (who held fair correspondency with the popes) that they might put his bulls in execution ; who delayed his concessions sometimes a year or longer, after the vacation of the living, during which the ordinary had admitted some able person into the place, who then began to be disturbed. For prevention of which, the <sup>1</sup>statutes of 7<sup>o</sup> Henry IV. and 3<sup>o</sup> Henry V. were made, that no licence should be available against any possessed of a living at the day of the date thereof, and farther to make void all so granted. After <sup>2</sup>which the contract, too long to be here inserted, between Martin V. and the English church, for settling several disputes of ecclesiastic cognizance, as of uniting benefices, consolidations, &c., was concluded ; in which the papacy seems to permit such particulars to the English clergy, as they would not be restrained in, though formerly claimed not to be exercised but by his authority. Yet 8<sup>o</sup> Henry V. § 10, the commons petition, *que null personne, de quell estate ou condition qu'il soit, ne amesne, [ne apporte] hors du roialme d'Angleterre... or ne argent pur marchandiser, [ne pur benefice] de saint esglise, ou autre grace ou privilege de saint esglise avoir, ne pour autre cause queconque.*

22. It would be here tedious, and not greatly pertinent, to repeat all the provisions made in this kind, for the well-governing the clergy of this kingdom, and preserving of them free of 92 destruction from abroad ; which yet were never such, but the pope and his officers did export a great quantity of treasure from them. <sup>3</sup>William Thorn hath recorded the disbursements to the court of Rome, at the election of Michael, abbot of St Augustine, 1375, not to have been less than £428. 17s. 10d. beside the expense of such as were sent, and what was paid for the loan of money to make these payments, viz. £130. 18s. 2d. Our historians <sup>4</sup>observe, in the parliament held 1532, 23<sup>o</sup> Henry VIII., it was computed, the papacy had received out of England for only the investitures of bishoprics, in the forty years last

<sup>1</sup> Statutes, 7<sup>o</sup> Hen. IV. c. 8 : 3<sup>o</sup> Hen. V. c. 4.

577, ed. 1729.]

<sup>3</sup> [col. 2152, l. 43, etc.]

<sup>2</sup> Concordata inter Martinum V. et Ecclesiam Anglicanam, in Actis publicis Archiepisc. et in Bibliotheca Cotton. MS. [Vid. Rymer, Foedera, etc. Vol. IX. p.

4 Antiquit. Britan. p. 326, l. 52, [ed. 1605] : Hall's Chronicle, 24<sup>o</sup> Hen. VIII. fol. 203, a : Herbert's Life of Hen. VIII. p. 358.

past, an hundred and sixty thousand pound sterling, which is four thousand pound by the year : an incredible sum, considering the poverty of the realm for lack of silver, the weight of the money then current, and the strict laws of former princes against such-like transportations.

23. Thus having shewed the beginning of the papal authority with us, and how from the general power all bishops received from Christ, and the fatherly care such as were instrumental in the conversion of a people did carry to them as their spiritual children, and the obedience they likewise yielded to their ghostly fathers, the pope began by steps (as I may say) to exercise a dominion over the clergy here, and not stopping there, upon various pretences, by several ways, and (as it appears) degrees, to become so far lord of their temporals, that they might not dispose of them well, contrary to his liking, because he had the sole rule of all committed to him from Christ ; the first point I conceive sufficiently proved, viz. that what was gained thus by great industry, at sundry times, by several means, could no way speak his superintendency over this church *jure divino*.

The second point remains, whether our princes, by the advice of their clergy, had not authority to cause them reform this church, without any new assumption of power, not formerly invested in the crown : which leads me to shew what the regal 93 power *in sacris* was here held to be before Henry VIII. and Rome divided each from other.

## CHAPTER V.

### HOW FAR THE REGAL POWER DID EXTEND ITSELF IN MATTERS ECCLESIASTICAL.

BEFORE I enter into the dispute of the right the kings of England did exercise in the regiment of this church, I hold it not unnecessary to see, in what divines hold ecclesiastic authority doth consist. <sup>1</sup>Bellarmino, <sup>2</sup>Turrecremata, and others divide spiritual power into *ordinis*, which they refer to the administration of the sacraments; and *jurisdictionis*, which they hold double, internal, where the divine by persuasions, wholesome instructions, ghostly counsel, and the like, so convinces the inward conscience, as it is wholly obedient to his dictates, such as those of St Peter were, Acts ii. 37; and external, where the church *in foro exteriori* compels the Christian's obedience. Now for the first and second of these, our kings did never take upon them at all to meddle: for they neither assumed a power of preaching, teaching, binding, or loosing *in foro animæ*, administering the holy sacraments, conferring orders, nor to any particular is properly annexed to them; only to such things as are of the outward policy of the church, as that God may be truly served, such as transgress the received lawful constitutions even of the church fitly punished, by the right of their crown, the continued practice of their ancestors, they could not doubt but they might deal in; causing all others, be they clerks or other, that offend, to suffer condign punishment.

94 2. For the better understanding how far the ecclesiastic rule of our princes did extend, we are to know, they were never doubted to have the same within their dominions, Constantine had in the empire; and our bishops to have that St Peter had in the church. *Ego Constantini, vos Petri gladium habetis in manibus*, said king Edgar to his clergy, in that his speech so <sup>3</sup>recommended to posterity. And therefore, as after the christian magistrate began to have government, affairs of most concern-

<sup>1</sup> De Romano Pontif. Lib. iv. c. 22.

<sup>2</sup> Summa de Ecclesia, Lib. i. c. 93, 96, [ed. Rom. 1560.]

<sup>3</sup> Apud Ethelred. [de Genealogia Re-

gum Angl., inter Scriptores x.] col. 361,

1.16. "Beato Petro, cuius vicem episcopi gerunt." Caroli Magni Capit. Lib. v. c. 163.

ment in the church (as is <sup>4</sup>said) had their dependence on the emperor, the greatest synods called by him, and the holy men of those times did not doubt the continuing to him the title of *pontifex maximus*, as <sup>5</sup>Baronius notes, *sine ulla christianitatis labe*; and as <sup>6</sup>Constantine did esteem the ecclesiastics *τῶν εἰσω τῆς ἐκκλησίας*, but himself *τῶν ἐκτὸς ὑπὸ Θεοῦ καθεσταμένος ἐπίσκοπος*, “them for things within, but himself for matters without by God appointed a bishop”—so the same king Edgar, <sup>7</sup>no less to be remembered by the English than Charles the Great by the French, was <sup>8</sup>solicitous of the church of his kingdom, *veluti Domini sedulus agricola*, and *pastorum pastor*, was reputed and writ himself the vicar of Christ, and by his <sup>9</sup>laws and canons assured the world he did not in vain assume those titles, and yet *sine ulla christianitatis labe*, so far as antiquity ever noted.

3. What particulars those were the emperors did hold *τὰ ἐκτὸς τῆς ἐκκλησίας*, “to be without the church,” belonging, as I may say, to their episcopacy, nothing can better teach us than their commands yet remaining in the laws they published; as in the *Codex Theodosianus, de feriis, de nuptiis, etc., de fide catholica, de episcopis ecclesiae et clericis, de monachis, de haereticis, de apostatis, de religione, de episcopali iudicio, etc.*: in *Codex Justiniani, Lib. I. Tit. 1, 2, 3, 4, 5, et passim in eo*: and in the Novels, Constit. vi.: *Quomodo oporteat episcopos et ceteros clericos ad ordinationes perduci. Constit. [77], 137: de ordinatione episcoporum et clericorum.* The prefaces to which 95 three laws, especially the first and the last, are remarkable; shewing the priestly office is *divinis ministrare*, and the princely, *maximam habere sollicitudinem circa vera Dei dogmata, et circa sacerdotum honestatem, &c.*; the other beginning thus: *Si civibus leges, quarum potestatem nobis Deus pro sua in homines benignitate credidit, firmas ab omnibus custodiri ad obedientium securitatem studemus, quanto plus studii adhibere debemus circa sacrorum canonum et divinarum legum custo-*

<sup>4</sup> Socrat. Hist. Eccl. Proœm. Lib. v. [p. 259, c.]

<sup>5</sup> Baron. Annal. Tom. III. ad an. 312, c. [According to this reference the words of Baronius are “absque idolatriæ aliquo crimine.”]

<sup>6</sup> Euseb. de Vita Constantini, Lib. iv. c. 24.

<sup>7</sup> Florent. Wigorn. A.D. 975, p. 607.

<sup>8</sup> Regularis Concordia, etc. in Notis Seldeni ad Eadmer. p. 146, l. 16: p. 155, l. 6, l. 15: Spelman. Concil. [Tom. I.] p. 437, cap. vii.: p. 438, cap. viii.: Vid. Leges Edward. c. 17, p. 142, [ed. 1644.]

<sup>9</sup> Spelman. Concil. Tom. I. pp. 444—476.

*diam?* And accordingly in Constit. cxxiii. in forty-three chapters, he did establish many particulars pertaining to the government of the church and churchmen; and in Constit. cxxxii. not only <sup>1</sup>appointed the observance of the four first general councils, but <sup>2</sup>decrees the place or precedence of the pope of Rome and archbishop of Constantinople, should be according to their definitions above all other seats; and how far the dioceses of some chairs by him newly erected should extend, besides other points in several chapters to the number of fifteen, treating of particulars solely held now of ecclesiastical cognizance<sup>3</sup>; as did likewise Charles the Great and Ludovicus Pius, in their Capitulars, in very many places. But with these I have not took upon me farther here to meddle, than, by naming some, to shew they having been practised by emperors, the kings of England endowed from above with the same authority *in ecclesiasticis*, might very lawfully within their dominions exercise the like. The question therefore will be, what they did understand their power in the church to be, and accordingly how far they did extend it in use.

4. As for the first, nothing can speak more clear than what themselves published on mature and sad deliberation, yet remaining in their laws; in which we find the regal office thus described: *Rex, quia vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum, et populum Domini, et super omnia, sanctam veneretur ecclesiam ejus, et regat, et ab injuriosis defendat*: and a little after: *Debet rex Deum timere super omnia, et diligere, et mandata ejus per totum regnum suum servare. Debet etiam sanctam ecclesiam regni sui, cum omni integritate et libertate, juxta constitutiones patrum et prædecessorum, servare, fovere, manu tenere, regere, et contra inimicos defendere, ita ut Deus præ ceteris honoretur, et præ oculis semper habeatur.* [Agreeing with that of <sup>5</sup>Theodoricus, king of France, about 670: *Decet regalem clementiam ut non*

<sup>1</sup> Cap. i.

<sup>2</sup> Capp. ii. iii. iv.

<sup>3</sup> Vid. Novel. Constit. cxlii.

<sup>4</sup> Leges Edw. Confessor. c. 17, p. 142.

[In this and the following quotations from the Anglo-Saxon laws, the author, for the most part, made use of Wheloc's edition of the 'Archaionomia' (Cantab. 1644): the readings of that edition are

here retained, although varying from the 'Ancient Laws and Institutes' published in 1840. The variations are often slight and verbal; but in the present reference to the Laws of the Confessor, the whole of the second extract is discarded by the last editor.]

<sup>5</sup> [Preuves des Libertez de l'Eglise Gallicane, chap. xv. §10, p. 330.]

*solum gubernacula regalis culminis provideat, sed et regimina ecclesiarum et monasteriorum pro Dei intuitu et mercedis nostrœ augmento sollerti cura providere, etc.]*

Canutus: <sup>6</sup> *Nobis omni ope atque opera enitendum erit, qua potissimum ratione ea exquiramus consilia, quæ ad reipublicæ pertinent utilitatem, pietatem confirmant christianam, atque omnem funditus injustitiam evertant, &c.* Jorvalensis renders it, *quomodo possit . . . recta christianitas propensius erigi.*

Ina: <sup>7</sup> *In magna servorum Dei frequentia religiose studebam, tum <sup>8</sup> animorum nostrorum saluti, tum communi regni nostri conservationi;* which Jorvalensis reads, *sollicitus de salute animarum nostrarum et de statu regni*, shewing the care both of his subjects' souls and bodies, however after a differing way, did in some measure pertain unto him.

5. Neither did these expressions pass only from the worst of our kings; but from Ina, *rex maxime pius*, as <sup>9</sup>Baronius styles him; from Canutus, who not only himself, 1031, went in devotion to Rome, but was acknowledged <sup>10</sup>*erga ecclesias atque Dei servos benignissimus largitor*; Edward the Confessor, a canonized saint—famous for being the best kings and holiest men: who did not only leave us in their laws the king's part, but what they conceived likewise the bishops' was, *viz.* to be <sup>11</sup>*Dei præcones, divini juris interpres*, that they were *rerum divinarum commoda prædicare palam*, that for and to the people they should *vigilare, excubare, proclamare*, [as those who were *eruditione atque doctrina gregem Domini speculari ac defendere, etc.*: or as Jorvalensis explains it], <sup>12</sup>*contra spirituales nequicias debent populo prævidere*, by letting them know, *qui Dei præceptis obedire neglexerit, hic cum ipso Deo commune non habeat.* And this is that sword of St Peter mentioned by king Edgar, which when the holy bishops of the primitive times did only put in execution, they neither found princes backward in supporting their designs, nor people refrac-

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<sup>6</sup> Leges Canuti, c. xi. p. 109: Jorvalens. [Chronicon] col. 923, c. 31: Vid. Leges Canuti, c. xxv. p. 106, et Jorvalens. col. 921, c. 23.

<sup>7</sup> Leges Inæ in Præfat. p. 1: apud Jorval. col. 761, l. 40, etc.

<sup>8</sup> *raþla*, Saxon.

<sup>9</sup> Annal. Tom. IX. ad an. 740, xiv. :

Vid. Hen. Huntndon. Lib. iv. p. 337, et seqq.

<sup>10</sup> Fulbert. Carnotensis Epist. xcvi. p. 93, Opp. Paris. 1608.

<sup>11</sup> Leges Canuti, c. xxvi. p. 106: Apud Jorval. col. 922, l. 17, etc.

<sup>12</sup> Sequor in reliquis Jorval. [ibid.]

tory to their exhortations. Thus we see, as they declared the office of a king, they were not silent in that of a bishop, shewing how either laboured in his way the reducing people to piety and a virtuous life; the one by making good laws for compelling the wicked, the other by giving such instructions as convinced the inward man.

6. So that we often meet with the prince extending his commands to the same things, the priest did his persuasions: as

I. In point of sacraments, <sup>1</sup>that children should be baptized within thirty days after birth.

II. And, because it seems some priests were negligent performers of that duty<sup>2</sup>, that such as were not prepared, or denied the baptizing of them, should be punished.

III. <sup>3</sup>No person be admitted to the eucharist, be a god-father, receive confirmation from a bishop, not knowing the *Pater noster* and Belief.

IV. <sup>4</sup>That persons instructed should receive the communion thrice every year.

V. <sup>5</sup>Restrained by their laws matrimony to the sixth degree of consanguinity.

VI. <sup>6</sup>Reserved to themselves a liberty of dispensing with the marriage even of nuns. And it is not to be forgot, in that particular, Lanfranc joins the king's advice, (as a person of equal power) with his own: <sup>7</sup>*et hoc est*, saith he, *consilium regis et nostrum*.

98 VII. <sup>8</sup>Commanded the observance of Lent *principali auctoritate*.

VIII. <sup>9</sup>Appointed certain days to be held festival by the

<sup>1</sup> Leges Inse, c. ii. p. 1: Jorval. col. 761, c. 2.

<sup>2</sup> Jorval. col. 830, c. 5: Fœdus Edwardi et Guthruni, c. iii. p. 42, [in 'Archaionomia']: Excerptio[n]e Egberti, c. x. xi. xii. in Spelman. Concil. [Tom. I.] p. 259; where you may observe the king's precept to impose on the transgressor the payment of twelve *ora*, but the bishop's to be only persuasive. What *ora* was, see Mr Sumner's 'Glossary,' [sub calc. Scriptor. x. ed. Lond. 1652.]

<sup>3</sup> Canones dati sub Edgaro, capp. xvii. xxii. p. 67: Leges Canuti, c. xxii. p. 105: Spelman. Concil. [Tom. I.] p.

599, § 22: Jorval. col. 921, l. 57.

<sup>4</sup> Leges Canuti, c. xix. p. 104: Jorval. col. 921, l. 32.

<sup>5</sup> Leges Canuti, c. vii. p. 101: Jorval. col. 919, c. 11.

<sup>6</sup> Leges Aluredi, c. viii. p. 25: Jorval. col. 823, c. 9.

<sup>7</sup> Lanfranc. Epist. xxxii. p. 316.

<sup>8</sup> Bed. Hist. Eccl. Lib. III. c. 8.

<sup>9</sup> Leges Aluredi, c. xxxix. p. 33: Jorval. col. 826, l. 60: which the laws of Canutus seem after to take away. Leges Canut. capp. xlii. xlivi. p. 118: Jorval. col. 927, c. 67—72: vid. ibidem, col. 920, c. 17—19, and Thorn, col. 2197, l. 15.

better sort, but allowed the servant and labourer to work in them.

I omit here their edicts for the observation of the Lord's day, payment of tithes, incontinency, and such-like, (held now merely of ecclesiastic cognizance), for the multiplicity of them.

IX. <sup>10</sup>Divided old, and erected new bishoprics.

Yet this is that <sup>11</sup>cardinal Bellarmine holds a point of so high concernment, no man can do it without authority obtained from Rome : which yet we never read to have been asked, <sup>12</sup>though Theodore, 679, erected five, *consensu regis*, at one time ; and some other altogether without the pope's liking, as those in the north, after the expulsion of Wilfred<sup>13</sup>.

X. [When the necessities of the church required, gave<sup>14</sup> bishoprics *in commendam*.]

XI. <sup>15</sup>Caused the clergy of their kingdom to meet in councils and sometimes presided themselves in them, though the pope's legate were present.

XII. [Did by <sup>16</sup>regal authority, as occasion served, appoint the saying masses and other services in the church.]

7. Of the crown's commanding in these particulars, it is apparent to have been in possession, the pope seeing and not interrupting any whit, whilst the Saxon and Dane bare here the sway ; when, to speak truth, it seems to me not so much to have been insisted on, by whose authority the thing commanded was done, as a care taken of all sides nothing should be required but just and pious ; which made each precept, without dispute, from what author soever it proceeded, be readily yielded unto : and so the Normans found it, under whom the first contentions concerning jurisdiction with the see of Rome began. For before William I. possessed himself of this crown, it is certain the English bishops had no ordinary courts distinguished from the lay, but both secular and ecclesiastic magistrate sat and judged

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On the same subject, see *Leges Canuti*, p. 103, capp. xiv. xvi. xvii. which was likewise exercised A.D. 1393, by Richard II.

<sup>10</sup> Bed. Hist. Eccl. Lib. III. c. 7 : Lib. IV. c. 12 : Lib. V. c. 19.

<sup>11</sup> De Concil. et Eccl. Lib. IV. c. 8, [in Disputation. Tom. II. p. 289, B.]

<sup>12</sup> Florent. Wigorn. A.D. 680, p. 685.

<sup>13</sup> Confer Bed. Lib. IV. c. 12, cum

Lib. V. c. 20. But of this before, [cap. iii. § 24.]

<sup>14</sup> [Diceto, A.D. 962, col. 456, l. 46 : see before, cap. iii. § 63.]

<sup>15</sup> Spelman. Concil. [Tom. I.] pp. 292, 293 : p. 189, et passim. Vit. Lanfranc. c. vi. p. 7 : Florent. Wigorn. A.D. 1070, p. 636.

<sup>16</sup> [Leges Ethelred. cap. iii. apud Jorval. col. 902, l. 26.]

together, what pertained *ad observantiam religionis, locis suis et a suæ diœceseos synodis*—as was likewise the custom <sup>1</sup> in France.

8. This were enough manifest, in that we find the lay not only present, but subscribers to many of our ancient <sup>2</sup> councils; did not the laws of <sup>3</sup> Æthelstan, <sup>4</sup> Edgar, <sup>5</sup> Canutus farther assure us. It is probable, inferior judicatures did refer matters of doubt to the greater courts or *rcip-jemōt*, to be held twice a year as the former edicts and <sup>6</sup>some councils did establish: which produced that care in the council of <sup>7</sup>Celichyth, 816, the bishop should transcribe judgments given *in qualicunque synodo* of what pertained to his diocese, and he to keep one copy, and the party whom it concerned another of such determination—which I take to be those laws mentioned by <sup>8</sup>Eadmerus, which as they were reposed in some parts of the church, so were the pleas, as it seems, usually <sup>9</sup>there held. But the Conqueror, finding these proceedings to be *non bene, neque secundum sacerdotum canonum præcepta, &c.*, did by his charter make a distinction of the courts, that such as were convented by the bishop should answer, *non secundum hundred, sed secundum canones et episcopales leges, &c.* The charter to Remigius, bishop of Lincoln, is upon record, <sup>10</sup>published by many, and was certainly by the Conqueror directed to every diocese through the kingdom: for I have seen, in an hand of <sup>11</sup>Edward I. one for London, testifying it was then found in the episcopal register there: [which is since recorded by Mr Dugdale].

9. When this passed the king, whether at the pope's legates being here for deposing Stygand, 1070—about which time historians remember he made some beginning for settling the English laws, and is therefore likely to have then passed this—or when they were here for settling the dispute between York and Canterbury,

<sup>1</sup> Caroli Magni Capitula, Lib. vi.

c. 111.

<sup>2</sup> In Spelman. Concil. *passim*.

<sup>3</sup> Apud Jorval. col. 845, l. 36.

<sup>4</sup> Leges, c. v. p. 64: Jorval. col. 872,

c. 10.

<sup>5</sup> Leges, c. xvii. p. 103: Jorval. col. 924, c. 38.

<sup>6</sup> Concil. Calcuth. apud Spelman. [Tom. I.] p. 293, c. 3.

<sup>7</sup> Apud Spelman. p. 330, c. 9.

<sup>8</sup> Eadmer. apud Gervas. Dorobern.

col. 1292, l. 18.

<sup>9</sup> Apud Gervas. Dorobern.: Simeon. Dunelm. sive Turgot. de Dunelmensi Ecclesia, Lib. III. c. 10; col. 35, l. 6, etc. [among the 'Scriptores x.'].

<sup>10</sup> See it in Sir Edw. Coke's Institutes, Part IV. c. 53, p. 259. ['Ancient Laws' &c., Vol. I. p. 495.]

<sup>11</sup> In antiquo MS. [Vid. Append. ad Hist. Eccl. S. Pauli a Gulielmo Dugdale, Lond. 1658, p. 196; Script. xviii.]

or at what other time, is uncertain. Yet I cannot deny, it seemeth to me to have given the occasion of those expressions in <sup>12</sup>Alexander II. his letter to him, that the world, *in maligno positus, plus solito pravis incumbat studiis; tamen inter mundi principes et rectores egregiam vestrae religionis famam intelligimus, et quantum honoris sanctæ ecclesiæ tum simoniacoë vires opprimendo*, (which is apparently spoken of Stygand), *tum catholicæ libertatis usus et officia*, (by which questionless he points at this charter), *confirmando, vestra virtus impendat, non dubia relatione cognoscimus, &c.* Now certainly, if he did grant it during the life of that pope, it must not have been after 1073, in which year he died. I confess I have not met with any clear example of the practice of it during the reigns of that king, or either of his children: for though Anselm, about 1106, writes to Henry I., who had punished certain clerks, not observing the decrees of a council held at Westminster, 1102, <sup>13</sup>*quod hactenus inauditum et inusitatum in ecclesia Dei de ullo rege et de aliquo principe: non enim pertinet secundum legem Dei hujusmodi culpam vindicare, nisi ad singulos episcopos per suas parochias*—yet I conceive this is to be interpreted of the king doing it alone without the bishop, not when they both joined together after the manner then in use, which himself elsewhere <sup>14</sup>advises Rufus unto: *Conemur una [queso] tu regia postestate et ego pontificali auctoritate, quatenus tale quid inde statuatur, quod cum per totum fuerit regnum divulgatum, solo etiam auditu, quicunque illius fautor est paveat et deprimatur.* I can take this for no other but that in the laws of <sup>15</sup>Æthelstan: *Debent episcopi cum sæculi judicibus interesse judiciis, ne permittant, si possint, ut aliqua pravitatum germina pullulaverint.* And the laws of <sup>16</sup>Henry I. are express, the use to have continued in his days; for they approve the ancient institution, that *generalia comitatum placita certis locis et vicibus convenire debere*, that the judges in those courts were *episcopi, comites, vicedomini, &c.* The causes they dealt in, and order of proceeding, *agantur primo debita veræ christianitatis jura, secundo regis placita, postremo causæ singulorum, &c.* And why may not *certa loca* here be what Anselm calls *parochia*, the Conqueror's 'hundret'?

<sup>12</sup> Baron. Annal. Tom. XI. ad an.

1071, ix.

<sup>13</sup> Eadmer. p. 85, l. 40, etc.

<sup>14</sup> Apud Eadmer. p. 24, l. 18, etc.

<sup>15</sup> Apud Jorval. col. 845, l. 36, etc.

<sup>16</sup> Leges Hen. I. c. vii. p. 180.

10. But good laws <sup>1</sup> are not always suddenly put in execution ; and this of the Conqueror we may take to have slept, till towards the beginning of king Stephen's time it had got some strength, for then we meet with plain precedents of the ecclesiastic courts being severed from the lay. Theobald of Canterbury molesting the monastery of St Augustine's, concerning certain privileges granted from the papacy, the abbot obtained a bull from Innocentius II., of the twentieth of November, 1139, in his house's favour, in which the pope expostulates with the archbishop, *quod occasione privilegii nostri, idem monasterium vehementer infestas, et ecclesias eidem canobio pertinentes eundem abbatem ordinare non sinas, quin potius violenta dominatione ecclesias eorum firmatas diceris infregisse, et presbyteros tuos, invito abbat, et ejusdem loci fratribus, contra Romanas ecclesiae privilegia, quibus idem canobium est munatum, in eis ponere præsumpsisse : nec his contentus, abbatem ipsum, et homines ejus, 'ad placitandum super hoc in curiam tuam,' prout asserunt, præsumptuose traxisti, eisque ob eam rem paenam moliris infligere, &c.*

11. William Thorn, who <sup>3</sup> mentions this, 1139, the fourth  
 102 of Stephen, observes, (which is warranted by the bull itself), *quod iste Theobaldus primo abbatem et conventum ad causas trahere conatus est* ; and is the first I have noted in which the ecclesiastics alone did force men to plead in their courts ; which, as it doth prove they then had it, so we may conclude them not long to have been possessed of that power. For it is altogether improbable, if that act of king William had been in his and his son's time generally practised, but some archbishop, in above fifty years, might have attempted as much, if not to the abbot, at least to some other ; as after this the examples are frequent, of which one in the hundred and twenty second epistle of *'Johannes Saresberiensis* is not unworthy the remembering. Symphorian, a clergyman of York, accused one Osbert, archdeacon of the same church, before king Stephen, the bishops

<sup>1</sup> " *Leges instituuntur, cum promulgantur : firmantur, cum moribus utentium approbantur.*" *Distinct. iv. c. 3,* [in the *'Corpus Juris Canonici.'*]

<sup>2</sup> *Habetur hæc Bulla in splendido MS. reposito in Aula S. Trinitatis, Cantab. ante 200 annos exarato.* [A Chronicle of the

Monastery of St Augustine, Canterbury : the passage occurs at fol. 74, a. col. 1.]  
*Et in alio MS. optimæ note ante quadringentos annos scripto, in Scachario, fol. 49, b.*

<sup>3</sup> *Chronica, col. 1800, 1. 46.*

<sup>4</sup> [p. 211.]

and lords, 1154, for making away William, the late archbishop of that see, by poison. A question grew, to whether court this cause belonged. The king affirmed it to belong to the temporal, for the heinousness of the fact, and because it was first entered upon in his presence. But before the decision Stephen died and Henry II. succeeded; *de cuius manibus* (saith my author) *vix cum summa difficultate, in manu valida, cum indignatione regis et omnium procerum, jam dictam causam ad examen ecclesiasticum revocavimus*; from whence it was by appeal carried to Rome.

12. But what this *manus valida* should be, that took the case from the king, I cannot imagine: for it is undoubted, in all disputes of this nature, the king to have been ever judge what court the cause did belong unto. Bracton speaks very clearly: <sup>5</sup> *Judex ecclesiasticus cum prohibitionem a rege suscepit, supersedere debet in omni casu, saltem donec constiterit in curia regis ad quem pertineat jurisdictione: quia si judex ecclesiasticus estimare possit an sua esset jurisdictione, in omni casu indifferenter procederet non obstante regia prohibitione*; [and if any prince's piety or compliance with the Roman chair carried him farther, it was <sup>6</sup>misliked of the wiser sort]. A.D. 1080, William I., in a <sup>7</sup>council at Illebon in Normandy, by the advice of both estates, ecclesiastic and secular, did settle many particulars to belong to the cognizance of the spiritual judge; and concludes, that if any thing were further claimed by them, they should not enter upon it, *donec in curia ejus monstrarent quod habere debeant*. Neither were the lay to molest them in the exercise of aught there mentioned, *donec in curia regis monstratum sit quod episcopi inde habere non debeant*. So in both reserving the decision to his own courts of what pertained to each. [Accordingly, 1224, when Richardus de Marisco, bishop of Duresme, went farther, the king's prohibition issued: <sup>8</sup> *Ne idem episcopus utatur libertate aliqua in curia sua, contra coronam et dignitatem, qua predecessores sui, jure episcopatus sui, usi non fuerant temporibus antecessorum nostrorum*,

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<sup>5</sup> Lib. v. de Exceptionibus, c. 15, § 3, fol. 412, a. [in his work 'de Legibus et Consuetudinibus Angliae,' ed. Lond. 1569.]

<sup>6</sup> [Vid. Mat. Paris, Additam. p. 202, § 31: Hist. Major, A.D. 1250, p. 777,

1. 30.]

<sup>7</sup> Concil. Illebon. § 47, apud Orderic. Vital. [Eccl. Hist. Lib. v.] p. 554.

<sup>8</sup> [Vid. Claus. 8<sup>o</sup> Hen. III. Membr. 11. in dorso.]

*regum Angliae; donec discussum fuerit, in curia nostra, utrum hujusmodi brevia et libertates pertineant ad ipsum episcopum, jure episcopatus sui vel non.* And when the archbishop of Canterbury summoned York to appear in council, by papal authority, and <sup>1</sup>complained to the king of his neglect, Henry I. replied, “he had done well, the disgrace being to him and his court.” By which it is manifest that princes held their courts to have inspection over the actions of the archbishop and his counsels: agreeing with that we find in <sup>2</sup>Eadmerus.] And that the ecclesiastic courts were not to act *ad libitum*, but to give an account to the crown, is not to be doubted by the charge against Becket, in which Henry II. urgeth, <sup>3</sup>*quod cuidam Johanni coram ipso litiganti plenam justitiam non exhibuit, et super hoc ad regis praesentiam vocatus, venire contempsit.* To which the archbishop answered: *Præfato Johanni condignam non defuisse justitiam, et Johannem non legaliter curiam suam infamasse, qui non super evangelium, ut moris est, sed super veterem cantuum codicillum, quem secum tulerat, voluerit pejerare, &c.*: and for his not attending the king, to give him satisfaction in the point, pleaded the excuse of sickness; yet for that contempt was adjudged to lose his moveables. [Insomuch as what that strong hand should be, did at any time take a cause from the king, I must profess not to understand.] But by it is evident the archbishop did then <sup>4</sup>exact oaths of such as were called into his court, that he was to give an account to the king of his carriage in it; who by his constitutions hath ever directed their manner of proceedings<sup>5</sup>. But of this <sup>6</sup>more hereafter.

13. The Conqueror, though he did shew so much compliance with the Romanist, as not to deny any thing former kings 104 had acknowledged to the papacy as due, yet farther than <sup>7</sup>they had gone, would in nothing submit unto it: and as they had by their edicts guided the ecclesiastic affairs of this kingdom, so he proceeded in his laws, <sup>8</sup>*a legibus sanctæ matris ecclesiae sumens*

<sup>1</sup> [Stubbs, *Actus Pontif. Ebor. col. 1720*, l. 15. See cap. iii. § 26.]

<sup>2</sup> [p. 6, l. 28.]

<sup>3</sup> *Apud Gervas. Dorobern. col. 1389, l. 37, etc. A.D. 1164. Vid. Rot. Parl. 2<sup>o</sup> Hen. V. Par. i. § 17.*

<sup>4</sup> *Gervas. Dorobern. ubi supra, l. 42: R. de Hoveden, A.D. 1165, p. 494, l. 11, etc.*

<sup>5</sup> See *Mat. Paris, A.D. 1247*, p. 727, l. 29: *A.D. 1246*, p. 716, l. 1.

<sup>6</sup> § 17, xix.

<sup>7</sup> *Willelmus ad Gregor. VII. inter Lanfranc. Epist. vii. p. 304: et apud Baronium, Tom. XI. ad an. 1079, xxv.*

<sup>8</sup> *R. de Hoveden, p. 601, l. 25.*

*exordium*, as did his son <sup>9</sup>Henry I. How far they did conceive this their power to extend in those matters, nothing can better teach us than the laws they and such as came after them—princes against whom no exceptions can lie—established, and usages they maintained as the right of the nation, in opposition of all encroachments whatsoever. [Which were so far from being exorbitances gained by strong hand, as natural franchises of common right, belonging to a church and kingdom; of which the king, as protector of each, ought to protect them in possession, from unjust intrusions or encroachments.]

14. To enumerate all these privileges (I conceive them with our ancestors better called rights) I hold impossible—the foundation or ground upon which they are built being that power, the divine wisdom hath invested the secular magistrate with, for preservation of his church and people in peace, against all emergencies from whomsoever proceeding; as the bishops of the province of Canterbury wrote to Thomas Becket, 1167: <sup>10</sup>*Rex a Domino constitutus paci providet subjectorum per omnia; ut hanc conservet ecclesiis, et commissis sibi populis, dignitates regibus ante se debitas et exhibitas sibi vult exhiberi.* And this issuing from so great authority, as in effect the body of all the clergy of the realm, cannot be imagined to be other than the constant opinion of the English church. In what these rights have been put in practice in opposition to Rome (of which I now treat) may in some sort be told: but to say these they are, and no other, is that I mean cannot be. So that we may say the affirmative, “These they are,” but not the negative, “Others they are not.” Therefore Eadmerus will have it of the Conqueror, that <sup>11</sup>*cuncta divina simul et humana ejus nutum expectabant*, that is, *in foro exteriori*; insomuch as, when the clergy, 1530, gave the king the title of “head of the church,” they intended no other than their forefathers, when they called him the <sup>12</sup>defender, <sup>13</sup>patron, governor, <sup>14</sup>tutor of it. 105

15. Which the French do attribute to their kings with

<sup>9</sup> *Leges Hen. I. c. v. c. vii.; et passim.*

<sup>10</sup> *Apud R. de Hoveden, p. 510, l. 50,* etc.

<sup>11</sup> *Eadmer. p. 6, l. 21.*

<sup>12</sup> *Mat. Paris, [Hist. Major] A.D. 1241, p. 555, l. 15.*

<sup>13</sup> [“Quem solum post Dominum et sanctos ejus in terra *patronum* habemus.” *Inter Becket. Epist. cxxxiii. p. 169, col. 2.]*

<sup>14</sup> *Epist. Universit. Angliae, [apud Mat. Paris,] A.D. 1245, p. 667, l. 38.*

more hard expressions: <sup>1</sup> *Ce qui monstre (says one) que les evesques de ce temps-là estimerent le roy, assisté de son conseil d'estat, estre apres Dieu ‘chef terrien’ de l'esglise de son royaume, et non pas le pape, in the negative.* Which another <sup>2</sup> explains thus: *Ce n'est point pour cela que je veuille dire, ce que aucuns ont trop indistinctement proferté, que lesdits rois et princes souverains soient en leurs estats, privativement à tous autres, chefs uniques et absolus de l'esglise, et de tous les ministres d'icelle; car pour le regard de ce qui concerne le maniement des choses purement sacrées, comme l'administration de la parole de Dieu et des sacrements, et la puissance de lier ou délier, voire de regler en particulier le dedans de chacune eglise, la surintendance en appartient aux evesques, et autres chefs de la hierarchie ecclesiastique, à chacun selon leur rang et degré.* Then shewing by comparison, that as the head architect leaves to his inferior agents the use of such instruments as are proper for their undertakings; so, *il n'appartient point au roi de manier les choses sacrées, ny supporter, comme l'on dit, l'arche d'alliance, ils doivent laisser cela à ceux de la vocation; mais ils peuvent voire, sont tenus devant Dieu veiller sans cesse, et avoir l'œil ouvert à ce que ceux de cest ordre et profession principale, aussi bien que ceux des autres moindres apportent en loyauté et saine conscience tout soin, diligence, pureté, et sincérité, au maniement des charges à eux commises, conformement a leurs lois, regles et canons; lesquels au cas qu'ils seroient negligez et effacez par la rouille de l'antiquité, ou que par la malice des hommes il fust besoin d'en faire de nouveaux, ils sont tenus user de leur puissance, pour y apporter des remedes [convenables], soit par leurs ordonnances et pragmatiques, soit par leurs jugemens, arrests, et executions d'iceux.* *C'est ce qu'en France nos predecesseurs ont toujours appellé la police exterieure sur l'eglise, de laquelle les empereurs, rois et princes ont usé et joüi sans contredit, tant que l'eglise s'est conservée en sa pureté, et qu'aucuns d'icelle ne se sont ingerez sortants de leurs bornes et limites d'usurper les functions royales.* Insomuch as Benigne Miletot doth not only affirm their kings to be <sup>3</sup> *chefs-protecteurs,*

106 <sup>1</sup> M. Claude Fauchet, en ‘Traitez des Droits et Libertez de l'Eglise Gallicane,’ p. 179, ed. 1639.

<sup>2</sup> M. Charles Faye, ibid. p. 230.  
<sup>3</sup> Du Delict Commun, [en ‘Traitez des Libertez’ etc.] p. 528; p. 657.

*et conservateurs de leur eglise Gallicane*; but recites a speech of the archbishop of Vienne made to Henry IV., 1605, in which he did affirm, *que le roy estoit le cœur et la teste de leur corps*. [Which is no other than that Amalarius, archbishop of Trèves, spake as of a thing without dispute, when about the year 830 he writ to Ludovicus Pius; <sup>5</sup> *sciamus vos rectorem esse totius christianæ religionis, quantum ad homines pertinet*. Which in effect is no other than that prince, so famous for piety, writes of himself, that he was constituted by God, <sup>6</sup> *ut sanctæ suæ ecclesiæ et regni hujus curam gereremus*. And, though *summa hujus ministerii in nostra persona consistere videatur*—who was therefore the *admonitor* of all—yet others were his *adjudatores*: that, ‘being not ignorant of every one’s duty, he could not omit the admonishing them according to their order’; and so addresses his laws, first to the bishops, then to others, which is that he had so learned of <sup>7</sup>Charlemagne his father. That emperor had the same authority among Christians, Josias had in the Jewish church; viz. as the learned <sup>8</sup>Leschassier rightly observes, *non pour baptiser et prescher, mais pour faire baptiser et prescher, et faire garder le droit de l’eglise.*]

16. And other headship than this I do not know to have been ever attributed to our princes. Certainly they did never take on them the exercise of any thing purely sacred, but as supreme <sup>9</sup>head, rulers or governors, under God, by their commissioners (of which such as bare most sway were ever the spirituality) ‘to visit, reform, redress, [order, correct, and amend] all errors, heresies, schisms, abuses,’ &c. And for that the rust of antiquity (as that author styles it) had much overspread the canons of the church, <sup>10</sup>to assign sixteen of the clergy, whereof four to be bishops, and as many of the lay, of which four to be learned in the common laws of this realm, ‘to peruse and examine the ecclesiastical laws of long time here used, and to gather, order and compile such laws ecclesiastical, as shall be

<sup>5</sup> [Amalarius Fortunatus Episc. Treverensis, de Ecclesiastico Officio, Præfat. i.] [in a collection of Treatises, de Divinis Officiis, Rom. 1591.]

<sup>6</sup> [Car. et Ludov. Capitul. Lib. 11. c. 2, 3.]

<sup>7</sup> [Præfat. Carol. Magn. in Capit. Lib. 1.]

<sup>8</sup> [De la Liberté ancienne et canonique de l’Eglise Gallicane, prope finem.] [Œuvres, p. 290, à Paris, 1652.]

<sup>9</sup> Statutes, 26<sup>o</sup> Hen. VIII. c. 1: 1<sup>o</sup> Eliz. c. 1, § 8.

<sup>10</sup> Statutes, 3<sup>o</sup> & 4<sup>o</sup> Edw. VI. c. 11, § 1: 25<sup>o</sup> Hen. VIII. c. 19: 27<sup>o</sup> Hen. VIII. c. 15: 35<sup>o</sup> Hen. VIII. c. 16.

thought to his majesty, his said council, and them or the more part of them, to be practised and set forth within this realm.' In pursuance of which, the eleventh of November, in the fifth year of Edward VI., he nominated two bishops, two divines, two doctors of the law, two esquires, to supervise the ecclesiastic laws of this kingdom, and to compile such a body as were fit to be put in practice within his dominions ; whose <sup>1</sup>intendments (for it passed no further) were after printed by John Day, 1571, and are no other than what the French (for the manner of doing), maintain their king might do : neither doth the inquisition of Spain publish any thing of that nature, without the allowance of their king, as I shall shew <sup>2</sup>hereafter.

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17. So that, in my opinion, the question cannot be, whether princes are not capable of such a right ; but whether it were invested in the crown formerly, and made good by such a continued practice, as might authorise ours to take that title—when offered by the clergy, 1530—as well as the French kings have, without encroaching on that power the ecclesiastics had, and by our laws ought to exercise in England. Now, certain, our kings did in many things go along with the French in causes ecclesiastical : <sup>3</sup>*Rex Anglorum, exemplum accipiens ab illis baronibus qui sua statuta sanxerunt in Francia, quibus et dominus Francorum favorem jam præbuit, et sigillum apposuit, &c.* Clement VII. being held prisoner, 1527, by the emperor, the eighteenth of August cardinal Woolsey made an agreement with the French, for settling the ecclesiastic government of each kingdom during the pope's captivity. For the French, I shall remit the reader to the <sup>4</sup>deed which is printed ; but the English were to be such as should be agreed to, *prælatis accitis de mandato et auctoritate prædicti invictissimi Anglie regis*, whose determinations were to be *consensu ejusdem invictissimi Anglie regis*. But where <sup>5</sup>my lord Herbert conceives this to have been the first taste our king took in governing the clergy, I can no way be of his opinion ; for, without peradventure, the cardinal neither did nor durst have moved one step in making the ecclesiastics less depend on the papacy than the common law or custom of the realm warranted ; know-

<sup>1</sup> [Allusion is made to the 'Reformatio Legum Ecclesiasticarum.']

<sup>2</sup> Cap. viii. § 12.

<sup>3</sup> Mat. Paris, A. D. 1247, p. 727, l. 26.

<sup>4</sup> *Preuves des Libertez de l'Eglise Gallicane*, chap. xx. § 33, p. 529, [ed. 1639.]

<sup>5</sup> *Life of Henry VIII.* p. 209.

ing he must without that back have lost not only Clement VII., but all popes and the court of Rome, which must and had been his support, on the declining favour of so heady and dangerous a prince as Henry VIII., had he not cast off both the cardinal and his obedience to that see almost together. But how much he had the clergy before this under his government, the history of <sup>6</sup>Richard Hun is witness sufficient; and the rights the Conqueror and his successors were ever in contest with the papacy about, and maintained as the laws and customs of the realm, enough shew they did not command the ecclesiastics here, according to the will of any foreign potentate; nor were mere lookers on, whilst another governed the English church—some of which I shall therefore here set down.

I. They <sup>7</sup>admitted none to be taken for pope but by the king's appointment.

II. <sup>8</sup>None to receive letters from him without shewing them to the <sup>9</sup>king, who caused all words prejudicial to him or his crown to be renounced by the bringers or receivers of them.

III. <sup>10</sup>Permitted no councils, but by their liking, to assemble; which gained the name of convocations, 'as that <sup>11</sup>always hath been and ought to be assembled by the king's writ.'

IV. <sup>12</sup>Caused some to sit in them might supervise the actions, and *legato ex parte regis et regni inhiberent, ne ibi contra regiam coronam et dignitatem aliquid statuere attinet*: and when any did otherwise, he was forced to retract that he had done, as <sup>13</sup>did Peckham; or were <sup>14</sup>*in paucis servatæ*, as those of Boniface.

<sup>6</sup> See Hall, 6<sup>o</sup> Hen. VIII. [fol. 50.]

<sup>7</sup> Eadmer. p. 6, l. 26: Vid. Epist. Hen. Chichele, in Vita ejus, pp. 34, 35, 36.

<sup>8</sup> Eadmer. ibid.; p. 113, l. 1: W. Thorn, col. 2152, l. 1; col. 2194, l. 18; *et alibi*: Coke's Institutes, Part III. p. 127.

<sup>9</sup> [Which being continued by Edw. I., pope Nicholas IV. wrote that expostulatory letter to him, Raynaldus hath given the world (Tom. XIV. ad an. 1290, § 33); and afterwards, 20<sup>o</sup> Edw. III., it was enacted, *que nul Engleys, ne alien, porte bulle,*

*n'autre lettre papale, a evesque ou autre personne de la terre d'Engleterre, que touche busoigne des aliens . . . s'il ne les monstre au chanceller ou as gardiens des portz, etc.* (Rot. Parl. 20<sup>o</sup> Edw. III. § 42.)]

<sup>10</sup> Eadmer. p. 24, l. 5, l. 11.

<sup>11</sup> Statutes, 25<sup>o</sup> Hen. VIII. c. 19, § 1.

<sup>12</sup> Mat. Paris, A.D. 1237, p. 447, ll. 51, 52.

<sup>13</sup> Vid. Selden. de Synedriis, Lib. I.

c. 10. [Opp. Vol. I. Tom. II. p. 982.]

<sup>14</sup> Lyndewode, Provinciale, Lib. II. de Foro Competenti, [p. 92, not. d.]

V. <sup>1</sup>Suffered no synodical decree to be of force, but by their allowance and confirmation. <sup>2</sup>*Rex, auditis concilii gestis, consensum præbuit, auctoritate regia et potestate concessit et confirmavit statuta concilii a Gulielmo, Cantuariensi archiepiscopo, et sanctæ Romanae ecclesiæ legato, apud Westmonasterium celebrati.* <sup>3</sup>*In hoc concilio, ad emendationem ecclesiæ Anglicanæ, assensu domini regis et primorum omnium regni, hæc subscripta promulgata sunt capitula, &c.*

VI. Permitted no bishop to <sup>4</sup>excommunicate, or inflict any ecclesiastic censure on any baron or officer, *nisi ejus præcepto.*

VII. <sup>5</sup>Caused the bishops appear in their courts, to give account why they excommunicated the subject.

109 VIII. <sup>6</sup>Caused such as were imprisoned, after forty days' standing excommunicate, to be freed by writ, without the assent of the prelate or satisfaction given; <sup>7</sup>the king and his judges communicating with them *tam in divinis quam in judiciis*, <sup>8</sup>and commanding none to shun them, though by the ordinary denounced excommunicate.

IX. <sup>9</sup>Suffered no legate enter England but with their leave (of which before): [nor meddle in it of the customs of the country; it being *de maximis una, quæ regnum Angliae liberum ab omni legati ditione constituerat*].

X. <sup>10</sup>Determined matters of episcopacy, *inconsulto Romano pontifice.*

XI. Permitted no appeal to Rome; [nor any, <sup>11</sup>*auctoritate apostolica*, to be called out of the kingdom]; of which before.

XII. <sup>12</sup>Bestowed bishoprics on such as they liked, and <sup>13</sup>translated bishops from one see to another.

XIII. Erected new bishoprics: so did Henry I., 1109, Ely, taking it out of Lincoln; <sup>14</sup>Carlisle, 1133, out of York, or rather Duresme; but of this before.

<sup>1</sup> Eadmer. p. 6, l. 29.

<sup>7</sup> Ibid. § 12. <sup>8</sup> Ibid. § 13.

<sup>2</sup> Continuatio ad Florent. Wigorn.

<sup>9</sup> Eadmer. p. 58, l. 40: p. 113, l. 1:

A.D. 1127, p. 663.

p. 118, l. 28: [p. 138, l. 15.]

<sup>3</sup> Gervas. Dorobern. A.D. 1176, col. 1429, l. 16, etc.

<sup>10</sup> Eadmer. p. 115, l. 23, l. 31.

<sup>4</sup> Eadmer. p. 6, l. 31, etc.

<sup>11</sup> [Raynaldus, Annal. Tom. XIV. ad an. 1290, § 33. See cap. iii. § 33.]

<sup>5</sup> Mat. Paris, Additamenta, p. 200, § 7: Vid. 'Articuli Cleri,' <sup>9</sup> Edw. II. c. 7, [in Coke's Institutes, Part II. p. 622.]

<sup>12</sup> Florent. Wigorn. A.D. 1070, p. 636: Henr. Huntindon. [Hist. Lib. VII.] p. 382, ll. 23—27.

<sup>6</sup> Mat. Paris, Additamenta, p. 200, § 10.

<sup>13</sup> Eadmer. p. 96, l. 38, etc.: Florent. Wigorn. A.D. 1109, [p. 664.]

<sup>14</sup> Johan. Hagustald. col. 257, l. 48.

XIV. [Exempted <sup>15</sup>monasteries out of the bishops' jurisdiction ; and, the ordinary to them, inquired of the governance of hospitals. And here it may not be unworthy of a place, that a monk of Bury, about 1430, finding the frequency of this practice formerly, is so perplexed how it passed, as he can find no reason but only because the papacy had not then declared themselves on the point ; therefore <sup>16</sup>*sibi ad tunc et aliis licuit regibus quibuscunque, eo quod nullum pro tunc per summos Romanorum pontifices editum fuerat decretum, sive decretale, in oppositionem.* So as in his opinion the pope's *decreta* or *decreta* *alia* might, *ad libitum*, alter the laws of the kingdom, which yet I believe our lawyers will not admit them ever to have done.]

XV. <sup>17</sup>Commanded by writ their bishops to residency.

XVI. <sup>18</sup>Commanded their bishops, by reason of schism, vacancy of the popedom, &c., not to seek confirmation from Rome, but the metropolitan to be charged by the king's writ to bestow it on the elected.

XVII. [Allowed the subject to gain no jubilee at Rome : <sup>19</sup>not in that so famous year, 1350, when all Europe swarmed thither and the pope desiring it of him ; yet permitting his own prelates to confer *grandes indulgentias* upon them.]

XVIII. <sup>20</sup>Placed, by a lay hand, clerks in prebendary or parochial churches, *ordinariis penitus irrequisitis*. And it is not here unworthy the remembering, that William Lyndewode, a very learned canonist, who wrote about an hundred years before Henry the eighth's difference with Clement VII.—finding the crown in possession of this particular not agreeing with the rules of the canon law—is so perplexed, as in the end he finds no way to make the act valid, <sup>21</sup>but that he doth it by papal privilege. For if by prescription, *episcopo sciente et tolerante*, it could not be good ; for though the king might confer the temporals of the church, *non tamen potest dare jure*

<sup>15</sup> [Charta Gulielm. I. in Monasticon Anglicanum, Tom. I. p. 317, a. 1. 60.]

<sup>16</sup> [Vid. Monasticon, Tom. I. p. 290, col. 2.]

<sup>17</sup> Vid. Coke, Institutes, Part II. p. 625.

<sup>18</sup> Rot. Parl. 3<sup>o</sup> Hen. V. Pars II. (16<sup>o</sup> Martii), § 11, A. D. 1416.

<sup>19</sup> [Cronica di Matteo Villani, Lib. I.

c. 29, c. 56,] [in Ferenze, 1581] : [Hen. de Knyghton, col. 2601, ll. 28, 33, 40; col. 2623, l. 19.]

<sup>20</sup> Mat. Paris, Additamenta, p. 200, § 6.

<sup>21</sup> Provinciale, Lib. III. de Cohabitatione Clericorum, etc. Gloss. ad verb. 'Beneficiati,' [p. 126, col. 1.]

110 *suo potestatem circa spiritualia, viz. circa ea quæ pertinent ad regimen ecclesiasticum, et ministracionem sacramentorum et sacramentalium ; nec non circa ecclesiasticae jurisdictionis exercitium, et hujusmodi, quæ jure spiritualia sunt. Nec in hoc casu potest sibi prodesse præscriptio etiam longissimi temporis, quia talia spiritualia non possunt per regem possideri, et, per consequens, nec ut transeant sub sua potestate possunt præscribi, nec consuetudine introduci.* In which he will have an hard contest with divers French and Italians, who maintain, <sup>1</sup> *che tutte le ragioni, che si possono acquistare per dispensa del papa, si possono acquistar anche per consuetudine, la quale sopravvenga contraria alla legge :* that a prince may prescribe for such acts as he can acquire by the pope's dispensation. [And our king's courts to have interposed of their own right, in matters of purely ecclesiastic cognizance, cannot be doubted by that of Nicholas IV., 1290, to Edward I. : <sup>2</sup> *Regia curia de nonnullis causis, ad ecclesiasticum forum indubitanter pertinentibus, quarum cognitio non cadit in laicum, spretis sacris canonibus, se intromittit.*]

XIX. <sup>3</sup> Prohibited the lay yielding obedience, or answering by oath to their ecclesiastic superior inquiring *de peccatis subditorum* : which I take to have been in cases not properly of their cognizance, not of witnesses either in causes matrimonial or testamentary.

XX. I shall add to these particulars an observation in Matthew Paris ; where the ecclesiastics, having enumerated several cases in which they held themselves hardly dealt with, add, <sup>4</sup> that in all of them, if the spiritual judge proceeded contrary to the king's prohibition, he was attached : and, appearing before the justices, constrained to produce his proceedings, that they might determine to which court the cause belonged : and if found to pertain to the secular, the spiritual judges were blamed ; and, on confession they had proceeded after the prohibition, were amerced ; but denying it, were compelled to make

<sup>1</sup> Considerazioni del P. M. Paolo sopra le Censure del pape Paolo V. [Opp. Tom. III. p. 209 : in Helmstat, 1793.] Vid. Fulgentio, Confirmatione delle Considerationi del P. M. Paulo, pp. 312, et seqq. [in Veneta, 1606.]

<sup>2</sup> [Raynaldus, Annal. Eccl. Tom.

XIV. ad an. 1290, § 33.]

<sup>3</sup> Mat. Paris, Addit. p. 200, § 9 : et in Hist. Major, p. 716, l. 7 : Vid. Selden. de Synedriis, Lib. I. c. 10. [Opp. Vol. I. Tom. II. p. 996.]

<sup>4</sup> Mat. Paris, Addit. p. 202, § 30.

it good by the testimony of two <sup>5</sup>vile varlets ; but refusing such purgation, were imprisoned till by oath they freed themselves to the justices ; that being cleared even by the lay, they had no satisfaction for their expence and trouble. By which, by the way, it is manifest how much the king's courts had the superintendency over the ecclesiastic.

XXI. [And of all these immunities, rights, or liberties, pertaining to the crown, the king could not be judged, neither was to plead before any other <sup>6</sup>than in his own court—which is the same the crown of France doth likewise challenge : *ne peut le pape juger, ny deleguer pour cognoistre de ce qui concerne les droits, preeminences et privileges de la couronne de France, et ses appartenances ; et ne plaide jamais le roy de ses droits et pretensions qu'en sa cour propre.*]

18. These and many other particulars of the like nature, 111 daily exercised, notwithstanding the clamour of some ecclesiastics more affecting their own party than the rights of the crown, make there can be no scruple, but the English did ever understand the outward policy of this church, or government of it *in foro exteriori*, to have much depended on the king ; and therefore the writs for summoning parliaments express the cause of his calling them to be, *pro quibusdam arduis, urgentibus negotiis, nos, statum, et defensionem regni nostri Anglie et ecclesie Anglicane concernentibus*, <sup>8</sup>or, as our bishops have sometimes expressed it in the rolls of parliament, *a pleisance de Dieu—que seint esglise soit governez et defenduz—et pur bone governance de son roialme.* Likewise the commons, that their gift of the ninth sheaf, &c. to Edward III., to have been for his defence of the kingdom, <sup>9</sup>et de seinte esglise d'Engleterre. According to which our kings joined both together, professing their care for amending the church to be equal with that of the commonwealth. <sup>10</sup>Item fait assavoir, que nostre tres-soverain seigneur le roy, eiant' graunde volunte et desir de l'estate de seint esglise, et de son roialme en les choses, ou

<sup>5</sup> “Vilissimi ribaldi.”

<sup>6</sup> [See Mr Selden, de Synedriis, Lib. I. c. 10, p. 979 : Mat. Westmonast. A.D. 1301, pp. 436, 437 : Thom. Walsingham, A.D. 1302, p. 81, l. 13, etc.]

<sup>7</sup> [M. Pithou, en ‘Traitez des Droits et Libertez de l'Eglise Gallicane, p. 9 ;

ed. 1639.]

<sup>8</sup> ‘L'evesque d'Excestre, chancelier d'Engleterre.’ Rot. Parl. 20<sup>o</sup> Ric. II. § 1.

<sup>9</sup> Vid. Rot. Parl. 15<sup>o</sup> Edw. III. § 25.

<sup>10</sup> Ibid. 2<sup>o</sup> Hen. V. Pars i. § 22.

*mestier est d'amendement, a l'honneur de Dieu, et pur la pees et la commune profit [si bien] de seinte esglise d'Engleterre, come de tout son roialme, de l'advis et assent des seigneurs espirituelx.....ad fait certains estatutx.* In pursuance of which interest residing in the crown, the lords and commons, [when they had cause of suspicion, something from the pope abroad, the clergy or others at home, tended either to the diminution of divine service, their own rights or liberties, had ever recourse to their king, as whose office it was to see it redressed. The beginning of the petition of the lords and commons, 35<sup>o</sup> Edward I. at Carlisle assembled in parliament, 130<sup>6</sup>/<sub>7</sub>, as it stands yet on record, is observable. It speaks thus: <sup>1</sup> *A nostre seigneur le roy prient contes, barons, et tote la communauta de la terre, aide et remedie des oppressions southescrites, que l'apostolle fait faire en ceste roialme, en abbessement de la foi Dieu et anyntissement de l'estat de seinte esglise en roialme, &c.* Therefore they did then hold the pope might go against the faith of God, to the destruction of holy church; and the king to have a right to give aid and remedy against these enormities].

In Richard the second's time, there being a fear the opinions called Lollardy might prevail, <sup>2</sup> *petierunt a rege de istis remedium apponi, ne forte archa totius fidei ecclesiæ talibus impulsionibus in illius temporibus, præ defectu gubernaculi, irremediabiliter quateretur.* Upon whose desires, he commanded the archbishop of Canterbury and his other bishops, *ut officium suum, singuli in suis diaconibus, secundum jura canonica acrius et ferventius exercent, delinquentes castigarent,*

112 *librosque eorum Anglicos plenius examinarent, errata extermi- narent, populumque in unitatem fidei orthodoxæ reducere studerent, ecclesiamque urticis, et vepribus defloratam liliis et rosis ornarent, &c.* After which, the said author records a commission, by which his majesty, as defender of the catholic faith, did empower certain to seize upon heretical books and bring them before his council: and such as after proclamation shall be found to hold such opinions, being called and examined before two commissioners (who were of the clergy), and lawfully convicted thereof, to be by his majesty's ministers committed to

<sup>1</sup> [Rot. Parl. 35<sup>o</sup> Edw. I.: 'Petitiones propositae contra W. de Testa.']

<sup>2</sup> Hen. de Knyghton, col. 2708, l. 40, etc. A.D. 1387.

the next prison. <sup>3</sup>Fourteen years after which, the commons shew Henry IV. the parliament might be compared to a mass, in which the archbishop of Canterbury began the office, reading the epistle and expounding the gospel,—which, it seems, they took to be the part of the ecclesiastic, as did the <sup>4</sup>Saxons before: *Et a la mesme [de la messe] que feust la sacrifice d'estre offertz a Dieux pur toutz Christiens, le roi mesmes a ceste parlement, pur accomplir celle mesme, pleuseurs foitz avoit declarez pleinement as toutz ses lieges, comment sa voluntee feust, que la foie de seinte esglise serroit sustenuz et governez en manere come il ad este en temps de ses nobles progenitours, et come il est afferme par seinte esglise, et par les seintz doctours, et par seinte escripture: and a little after, shewing they the commons were only to say, Deo gratias; which they were obliged to do for three reasons, the second of which is: Pur ceo que la, ou la foie de seinte esglise, par malvoise doctrine feust en point d'avoir este anientz, en grand subversion du roi et du roialme, mesme nostre seigneur le roy ent ad fait et ordeignez bon et joust remede, en destruction de tiele doctrine et de la secte d'icelle, par ont ils sont ensement bien tenuz de dire cel parol 'Deo gratias.'* By all these it must be granted, they did hold the chief care of the English church to have depended, in the outward policy of it, on the prince; or else that they did speak and do very unadvisedly in attributing so much unto him, and providing that he might be supplied to defend it, without at all mentioning any other to whose care it belonged. 113

19. Neither did these expressions and petitions pass the commons only, or the clergy over-ruled by the numbers of the temporality; but the bishops by themselves acknowledged how much it stood in his majesty's care to provide against any novelties creeping into the English church, and that it might enjoy the rights and liberties belonging to it. And therefore, when the said doctrine of Lollardy continued increasing, they, in the names *prælatorum et cleri regni Angliae*, petition <sup>5</sup>Henry IV.: *Quatenus . . . inclitissimorum progenitorum et antecessorum vestrorum laudabilia vestigia gracie considerantes, dignetur vestra regia celsitudo, pro conservatione [dictæ fidei catholice,*

<sup>3</sup> Rot. Parl. 2<sup>o</sup> Hen. IV. § 47.

<sup>4</sup> Supra, § 6.

<sup>5</sup> Rot. Parl. 2<sup>o</sup> Hen. IV. § 48.

*et sustentatione dicti cultus divini, ac etiam pro salvatione status, jurum, et libertatum] dictæ ecclesiae Anglicanae, ad Dei laudem, vestrique meritum, et totius regni predicti prosperitatem et honorem, et pro hujusmodi dissentionibus, divisionibus, dampnis, [scandalis] et periculis evitandis, super novitatibus et excessibus predictis in praesenti parliamento [vestro] providere de remedio opportuno.* Did not these then hold it the office of the king, as that his progenitors had ever done, to provide no dissensions, scandals, divisions might arise in the church, the catholic faith truly conserved and sustained? And what other did any of our princes ever challenge or assume?

20. When the clergy likewise went at any time beyond their bounds, or were negligent performers of their duties, the subject upon all occasions had recourse unto his majesty, as to whose care the seeing what was amiss redressed did especially belong: as <sup>1</sup>when the ecclesiastic courts were grievous for the fees, <sup>2</sup>or their pecuniary penances too heavy, when they were oppressed by papal provisions (of which before), when through the absence of their curate they were not so well taught, &c. 114 <sup>3</sup>when the frequency of the writ *ad capiendum excommunicatum* made it burdensome, <sup>4</sup>when men were cited by them on causes neither matrimonial nor testamentary, and appearing were not allowed a copy of the libel against them. In which case the king's answer is not unworthy the repeating, shewing clearly he directed how they should proceed: *Le roi voet, que a quell heure la copie de le libell est grantable par la ley, qu'il soit graunte et livere a la partie saunz difficulte.* It is true, kings would refer matters of that nature to their bishops, unto whose care under them it did especially belong: so Richard II. being <sup>5</sup>petitioned in point of residency, answered: *Il appartient as offices des evesques; et le roi voet qu'ils facent [deuement] lour office et devoirs, &c.* <sup>6</sup>His successor, being again pressed in the same kind, gives his command thus: *Facent les ordinaires leur offices et devoir [en cel cas]. Et par cause*

<sup>1</sup> Ibid. [31<sup>o</sup> Edw. III. § 4]: 50<sup>o</sup> Edw. III. § 84: 1<sup>o</sup> Ric. II. § 108.

<sup>2</sup> Ibid. 25<sup>o</sup> Edw. III. Octav. Purif. § 35.

<sup>3</sup> Ibid. 25<sup>o</sup> Edw. III. Octav. Purif. § 31.

<sup>4</sup> Rot. Parl. 2<sup>o</sup> Hen. V. Pars 1. § 17: Vid. Ibid. 46<sup>o</sup> Edw. III. §§ 36, 37; §§ 41, 42.

<sup>5</sup> Ibid. 17<sup>o</sup> Ric. II. § 43.

<sup>6</sup> Ibid. 7<sup>o</sup> & 8<sup>o</sup> Hen. IV. § 114.

que les pluralites q'ount este grauntees devant ces heures sont, et ount este, la greindre cause de l'absence des tieles curates, y plest au roy nostre seigneur, de l'adrys et assent des seigneurs en parlement, escrire par ses honourables lettres a nostre saint pier le pape, de revoker et repeller toutes tieles pluralites generalment; et que desore en avaunt nulle pluralite soit grauntee a ascuny en temps advenir. But the pope, it seems, giving no satisfaction in the particular, the <sup>7</sup>eleventh of Henry IV., the commons again petition, that the riches of the kingdom being in the hands of churchmen, those livings upon which the incumbent of common right ought to reside, half of the true value should remain to himself, but the other to the king. To which the answer is: *Cest matier appertient a seinte esglise. Et quant a la residence, remede ent fuist purveuz en la darrein convocation.* Yet this matter of non-residence still molesting the commonwealth, the third of Henry VI., the king tells them, by the advice of the lords of parliament, <sup>8</sup>he had delivered their bill to "my lord of Canterbury, chargyng hym to purveye of remedye for his provyne, and semblably shall write to the cherche of York for that provyne." By 115 which we may see the king, archbishop, and convocation did conceive themselves to have a power of redressing things in this church, which yet in civility they thought fit <sup>9</sup>first to acquaint the pope with, as a spiritual doctor or patriarch, however of great esteem, yet not endued with a power of commanding in this church otherwise than the laws of the kingdom, the contracts with the papacy, did bear.

21. Now it cannot be doubted that all these petitions of the commons, and sundry more which may be produced, had been by them vainly preferred, had they not taken the king to have been vested with a power of redressing things blameable in the government of the church. But when we say the prince, as the principal, without whom nothing is done, may be rightly termed 'head' in the act of reformation, our meaning is not, that he will deal in points of ecclesiastic cognizance, without the advice of his bishops, and other learned of the clergy: we know, in things proper, <sup>10</sup>Josuah is to take counsel of Eleazer; and the kings of this nation have ever done so.

<sup>7</sup> Ibid. 11<sup>o</sup> Hen. IV. § 70.

<sup>8</sup> Ibid. 3<sup>o</sup> Hen. VI. § 38: Vid. 4<sup>o</sup> Hen. VI. § 31.

<sup>9</sup> See cap. iii. §§ 14, 19.

<sup>10</sup> Numbers xxvii. 21.

22. When Edgar intended the advancing *Christi gloriam*, he chose him three bishops to be his <sup>1</sup>*patres spirituales et consiliatores*. But to speak of later times, <sup>2</sup>when the commons endeavoured a reformation of some things in the church, Henry VIII. would not answer their desires, till he had first acquainted the spirituality. When he intended to publish a <sup>3</sup>book of the “principall articles and poinctes of our fayth and belefe, with the declaration . . . . of other expedient poinctes, and also for the laufull rites, ceremonies, [and observations of Goddes service] within this realme,” he ordained it to be by “tharchebishops and sundry bishops of both provinces, and also a grete nombre of the best larned, honestest and most vertuouse sorte of the doctours of divinytye, men of discretion, judgement, and good disposition,” &c. And Edward VI., minding a farther reformation of some usages in the administration of the eucharist, he caused it to be <sup>4</sup>made ‘by the most grave and [best] learned [bishops and other] of his realm,’ for that purpose by his directions assembled at Windsor; who afterwards, <sup>5</sup>for taking away “diverse and sondrie fourmes and facions,” had formerly been used in sundry churches of England and Wales, “appoynted tharchebisshopp of Canterbury and certayne of the most learned and discrete bisshopps, and other learned men of this realm, to consider [and ponder] the premisses,” who, “by the ayde of the Holie Ghoooste, with one uniforme agreement,” concluded on and set forth the book of Common Prayer, &c. Upon which the two houses of parliament, “consideringe as well the moste godlye travell of the kinges highnes, . . . . in gatheringe and collectinge the saide archebischopp, bisshopps and learned men together, . . . . doe give to his highnes most hartie thanckes for the same.” So that it is apparent, the king, in composing this book, did not assume to himself, or the parliament attribute unto him, any other than assembling of the bishops and other learned men together, to take their consultations.

23. And they, observing the great <sup>6</sup>diversity in saying and singing in several churches, the difficulty of finding what

<sup>1</sup> Spelman. *Concil.* [Tom. I.] p. 433.

Book IX. p. 7, col. 1; p. 8, col. 2. Ed. 1684.

<sup>2</sup> Hall, 23<sup>o</sup> Hen. VIII. fol. 202, b: 24<sup>o</sup> Hen. VIII. fol. 205, a: Herbert's Life of Henry VIII. p. 357.

<sup>5</sup> Statutes, 2<sup>o</sup> & 3<sup>o</sup> Edw. VI. c. 1.

<sup>3</sup> Statutes, 32<sup>o</sup> Hen. VIII. c. 26.

<sup>6</sup> Preface to the First Prayer Book of Edw. VI.

<sup>4</sup> Fox, *Acts and Monuments*, Vol. II.

was proper for each day apt to breed confusion, reduced the public service of the church to one form more facile and of better edification, following therein the examples of divers holy bishops and others. For, if <sup>7</sup>Guarinus and William, abbots of St Alban's, in the office used in their church, about 1190, might *superflua resecare*, to reduce the prayers there to one form, [and add what they saw fitting]; if <sup>8</sup>Agobardus in France might *amputare superflua vel levia*, &c.; if <sup>9</sup>Osmund, bishop of Salisbury, in England, *quoniam singulæ fere diœceses in statis et precariis horis dicendis variabant, ad hanc varietatem tollendam, et ut quasi absolutum quoddam precandi, quo omnes uti possent, exemplar extaret, eas in eum fere ordinem et commodam rationem, quam hodie omnes prope Angliæ, Cambriæ, et Hiberniæ* (viz. the course of Salisbury) 117 *ecclesiæ sequuntur, magno et prudenti rerum ex sacris scripturis et probatis ecclesiæ historiis delectu, distribuit et digessit*; if these, I say, might do it on their own motion, there is no question [the king might appoint, after the example of Charles the Great, some of his clergy to take into consideration the removing out of it matters offensive or less edifying, by their advice correcting <sup>10</sup>*legendi et psallendi disciplinam*, causing them to compile a liturgy, *decerpens optima quæque de scriptis catholicorum patrum, lectiones unicuique festivitati convenientes per circulum anni in ecclesia legendas*: as the French to this day hold it a royalty of the crown, <sup>11</sup>not to permit any change in their missals or breviaries, but by the allowance of their king].

24. Neither did queen Elizabeth, at the beginning of her reign <sup>12</sup>alter some passages in it, but by the opinions of divines *eruditis et moderatis*; with whom was joined a learned knight, sir Thomas Smith, to whose care the supervising of it had by the house of commons been committed, the second of Edward VI., and therefore knew better than any other to give an account of that book.

Nor did herself, or the house of lords, use differing ways,

<sup>7</sup> Mat. Paris, Vit. S. Alban. Abbat. p. 101, l. 17: p. 123, l. 28, etc.

<sup>8</sup> Agobard. [Liber de Correctione Antiphon. c. 3]: Opp. Tom. II. p. 87, [ed. Baluz. Paris. 1665.]

<sup>9</sup> Harpsfield, Hist. Angl. Eccl. sœc.

x. c. 19, p. 251, l. 48, [ed. Duaci, 1622.]

<sup>10</sup> [Sigebert. Gemblacensis, A.D. 790, 807. Vid. A.D. 774.]

<sup>11</sup> [Vid. 'Preuves des Libertez de l'Eglise Gallicane, c. xxxi. p. 836.]

<sup>12</sup> Camden. Annales Elizabeth. [p. 8.]

<sup>1</sup>when the commons at other times have sought some change in the ecclesiastic government; as the twenty-third and twenty-seventh of her reign, where though the lord treasurer made a short beginning, yet he left the satisfactory answers to be given them by the archbishop of York.

Insomuch as we may safely conclude, when the clergy in convocation styled Henry VIII. *ecclesiae Anglicanæ protectorem unicum, et supremum dominum, et, quantum per Christi leges licet, supremum caput*, they added nothing new unto him, but a [past] title; for he and his successors after it, did never exercise any authority in causes ecclesiastic, not warranted by the practice of former kings of the nation.

By all which the second question remains sufficiently proved, that our kings were originally endued with authority to cause the English church be reformed by the advice of their bishops, and other of the clergy, as agreeing with the practice of all ages. For who introduced the opinion of transubstantiation: made it an article of faith: barred the lay of the cup: priests 118 of marriage: who restored the mass in queen Mary's days, before any reconciliation made with Rome: but the ecclesiastics of this kingdom, under the prince for the time being, who commanded or connived at it?

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<sup>1</sup> See 'Journals of the House of Commons,' 23<sup>o</sup> Eliz. March 3 & 7; 27<sup>o</sup> Eliz. Feb. 25.

## CHAPTER VI.

### HOW THE KINGS OF ENGLAND PROCEEDED IN THEIR SEPARATION FROM ROME.

IT appearing therefore by what hath been said, [the reformation of this church to have been built on these two undeniable maxims, as ancient, for aught I know, as christianity itself in the island—(1) that the king, as supreme governor, had a right of calling his clergy together, and by their advice causing the liturgy, or any thing else *juris positivi* in the church, defaced by the rust of antiquity, to be reformed; and they, under him, of declaring the articles of faith agreeable to the holy scriptures, and ever taught for such by the ancient primitive fathers and doctors in it—(2) that neither the pope, nor other from him, had any right of meddling in the English church, but by his permission and allowance; which is manifest by his sending no legate, but on the king's desire, and, when he did, he was treated with, or he came into the land, when he should have exercise of his power, and how much should be put in execution] —and that the statute, 24° Henry VIII. c. 12, that saith in effect as much, is no other than a declaration of the common law, that is the custom of the realm—the next enquiry will be, for acquitting the church of England in point of schism, how this separation from Rome was made.

2. Henry VIII. having long pursued a cause matrimonial with Clement VII., who shewed so much compliance to resolve it in his favour, as he sent cardinal Campeius hither to join with Wolsey, the king's creature, in the business; and upon the emperor's success in Italy, the cause, after many delays, being revoked to Rome, the king, upon the opinions of many foreign divines of the invalidity of his marriage with queen Catharine, caused the case to be determined by the English church—which judgment yet he would have in some measure submitted to the court of Rome, so as he might have given the persons to whom it was delegated by the pope full information, and the cardinals of the imperial faction excluded having any part in the decision. But Clement hearing what had passed in England, with more than ordinary haste determines the cause against him: which how

much it would irritate any prince of so great power, and so high a spirit as our Henry, I shall leave others to judge. And here I might allege many foreign examples, of those who upon less indignities have stopped all intercourse with Rome, as <sup>1</sup>Lewis XII. and Henry II. of France, if I had undertook to write an apology for him.

3. The king, upon the advertisement of these proceedings by the pope, which was at the beginning of the year 1534, falls first to those courses his ancestors had formerly done, when they had occasion to know how they ought to comport themselves in any thing towards Rome—which was, to have the advice of the English church; and thereupon wrote to the universities, great monasteries and churches of the kingdom, and the eighteenth of May, 1534, to the university of Oxford, <sup>2</sup>“requiring them, like men of virtue and profound literature, to diligently intreat, examine, and discuss a certain question, viz. *An Romanus episcopus habeat majorem aliquam jurisdictionem sibi collatam in sacra scriptura in hoc regno Angliae, quam alius quivis externus episcopus*; and to return their opinion in writing under their common seal, according to the mere and sincere truth of the same.” To which, after mature deliberation, and examination not only of the places of holy scripture, but of the best interpreters, for many days, they returned answer the twenty-seventh of June, 1534—without all peradventure according to the ancient tenet of the English—*Romanum episcopum majorem aliquam jurisdictionem non habere sibi a Deo collatam in sacra scriptura in hoc regno Angliae, quam alium quemvis externum episcopum*. Of this answer I have thought fit to make particular mention—though assented to by all the English clergy—because

120 Oxford hath been ever <sup>3</sup>held *æmula Parisiensis, ecclesiæ fundatum, fountaigne et miere de notre foy christiane*, as I formerly touched: whose opinion the English church hath therefore highly esteemed, and sought on all occasions of this nature —of which to give some examples.

<sup>1</sup> Whose coin is yet extant, having on one side his picture, and an inscription shewing him to be king of France and Naples; on the other, the arms of France, and these words, ‘Perdam Babylonis non-men.’ Thuanus, *Hist. sui temporis, Lib. I. p. 11, c.*

<sup>2</sup> [In Wood’s ‘Hist. et Antiq. Universit. Oxon.’ ad an. 1534, p. 258, ed. Oxon. 1674.]

<sup>3</sup> Mat. Paris, A.D. 1252, p. 889, l. 3: A.D. 1257, p. 945, l. 28.

<sup>4</sup> Rot. Parl. 1<sup>o</sup> Hen. VI. § 43.

4. Upon the election of Urban VI., France, Scotland, Flanders, and divers other parts adhering to Clement, who resided at Avignon,<sup>5</sup> the French king, 1395, caused a meeting of the clergy of his dominions, to search whether had the better right to the papacy: whose judgment was for Clement, which under the seal of the university of Paris was sent to Richard II., who thereupon *fecit convocationem Oxoniæ de peritioribus theologis tam regentibus quam non regentibus totius regni*, and they on the contrary judged Urban to have the better title. Whose opinion, under the seal of the university of Oxford, returned to the king, was by him transmitted into France, 1408, <sup>6</sup>*in concilio cleri celebrato Londoniis, assistantibus doctoribus universitatum Cantabrigie et Oxoniæ, tractatum est de censu et obedientia papæ subtrahendis vel non subtrahendis*: about which time twelve of the university of Oxford, on the archbishop's desire, in the name of the rest, examined the books and doctrines of Wickliff, and sent their resolutions to a synod at London in an epistle yet <sup>7</sup>extant. By all which it is manifest, how much their opinions were esteemed in this kingdom. And I hold it undoubted, a prince following so great advice, chalked out to him by the practice of his ancestors, could not be guilty of so heinous a crime as schism, arising only from disobedience to any spiritual superior whatsoever. <sup>8</sup>Gerson says, a private person runs into no contempt of the keys in divers cases by him enumerated; as one, *dum dicit aliquis jurista vel theologus juxta conscientiam suam, quod hujusmodi sententiae non sunt timendæ et hoc præsentim si observetur informatio seu cautela debita, ne sequatur scandalum pusillorum, qui aestimant papam esse unum Deum, [qui habet potestatem omnem in celo et in terra]*. And Navar, the greatest canonist of his time, <sup>9</sup>*qui unius doctoris eruditione ac animi pietate celebris auctoritate ductus fecerit aliquid, excusatur, etiamsi forte id non esset justum, et alii contrarium tenerent*. And to this purpose many more doctors may be alleged.

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<sup>5</sup> Hen. de Knyghton, col. 2671, l. 24: col. 2742, l. 23.

<sup>6</sup> Thom. Walsingham, A. D. 1408, p. 377, l. 34, etc.

<sup>7</sup> In Fasciculo Zizaniorum MS. in Biblioth. archiep. Armachani.

<sup>8</sup> Gerson, Resolutio circa materiam

excommunicationum, Considerat. xi. [Opp. Tom. II. col. 424.]

<sup>9</sup> [Martinus ab Azpilcueta, Doctor] Navarri, cap. 'Cum contingat de Rescriptis,' Remed. II. § 30; Opp. Tom. II. p. 78, col. 2, [ed. Lugdun. 1589.]

5. This as it was done by him, so he was led unto it by the example of his predecessors, as I have partly touched before; and shall therefore allege no other, but that in the disputes between Becket and Henry II., the archbishop, endeavouring to interest Alexander III. in the difference, that prince <sup>1</sup> caused it to be written unto him: *Si juri vestro vel honori præjudicatur in aliquo, id se totius ecclesiae regni sui consilio correcturum in proximo pollicetur: and a little after: <sup>2</sup> Dominus rex plurimum sibi justificare videtur, cum in omnibus quæ dicta sunt, ecclesiae regni sui consilio simul et judicio se pariturum pollicetur.* And this the often repeating of it, not only in a particular letter of the bishop of London, but of all the bishops of the province of Canterbury, both to the <sup>3</sup>pope and Becket, enough assure us how undoubted it was in those days, that our kings, following the advice of the English church, did proceed on safe grounds for their justification in such quarrels.

6. Neither was the opinion, returned by these divines, so differing from the writings of other learned men, as might make them any way guilty of schism. <sup>4</sup>Gerson, speaking of the several degrees of divine truths, places for the first such as are express in scripture, secondly those that are by evident consequence deduced from thence, thirdly such as being delivered by Christ, have been by the constant tradition of the church derived to us—of which he holds this proposition: *Universalis ecclesia pontifici Romano subjecta sit: and adds: Non enim posset evidenter aut per consequentiam pure de fide ex legibus primi generis humana deductione fulciri.* And <sup>5</sup>Contarenus, in a small tract *de Potestate Pontificis*, of that question says: *An auctoritas illa et potestas, qua pontifex maximus fungitur, sit ei consensu quodam hominis tributa, an potius divinitus tradita, qua de re [nostris] hisce temporibus maximos tumultus excitatos esse*

<sup>1</sup> R. de Hoveden, A.D. 1166, p. 502, l. 24.

<sup>2</sup> Ibid. l. 48.

<sup>3</sup> Apud R. de Hoveden, pp. 509—512.

<sup>4</sup> Gerson, *Liber de Vita spirituali Animæ*, [Lect. II.], Corol. VII. [Opp. Tom. II. p. 24, A.]

<sup>5</sup> Gaspar Contarenus, *de Potestate Pontificis*, [p. 2, ed. Venet. 1562. In his collected works, p. 581, ed. Venet.,

this passage stands as follows:... “neque etiam veriti sunt quidam asserere, hoc jus esse humanum.” It is then added, without the word *prope*, “ab horum hominum sententia maxime dissentire ac compertum habere, divinitus concessum esse,” &c. A similar mutilation of his ‘Tractatus de Justificatione’ is noticed by Ranke, *Hist. of the Popes*, Vol. I. p. 206, English Transl. 1841.]

*perspicimus; neque etiam veriti sunt viri in omni disciplinarum genere celebres, ac in christianæ theologie studiis illustres, in magno hominum conventu asserere, hoc jus pontificis humanum esse;* and then adds that he *ab horum hominum sententia maxime dissentire, ac prope compertum habere, divinitus concessum esse pontifici jus illud, &c.* So that this learned cardinal was not altogether resolved in the point, but as a disputable question had it *prope compertum.* The truth of which I leave him to dispute with the oriental Christians. It is manifest <sup>6</sup>Francis I. was of the contrary judgment; and our countryman <sup>7</sup>Stapleton delivers it as a catholic tenet of former times, *non divino, sed humano jure, et positivis ecclesiæ decretis primatum Romani pontificis niti, &c.*<sup>8</sup>

7. But I return to our <sup>9</sup>king, who now fortified by the opinion of the universities, public disputations in the convocation, and several precedents of former princes, his predecessors, in his rights—whereas the parliament before in some particulars restrained the profits of Rome, as in the payments of annates, Peter-pence, making appeals to it, whose beginnings with us I have formerly noted—did <sup>10</sup>26<sup>o</sup> Henry VIII., 1533, declare ‘his majesty, his heirs and successors, kings of this realm, shall have full power and authority from time to time to visit, repress, redress, &c. . . . all such errors, heresies, abuses, &c. which by any manner [of] spiritual authority or jurisdiction may be lawfully reformed, repressed, ordered, redressed,’ &c. This the court of Rome interpreted a falling off from the church, and the English no other than a declaration of that right had ever re-

<sup>6</sup> Sleidan, [de Statu Religionis et Reipublicæ Comment.] Lib. ix. [p. 108, col. 2.]

<sup>7</sup> Stapleton, de Principiis Fidei, Lib. xiiii. c. 15, [Opp. Tom. I. p. 496, c: ed. Paris. 1620.]

<sup>8</sup> [Which no doubt was the English tenet, as is manifest by their limiting *quam diu ipsum regem catholicum habuerint*, to be the extent of their obedience: by their shewing desires of departing from his union. *Diu desideravi*, says Henry II. *justam habere occasionem recedendi a papa Alexandro II. atque perveris cardinalibus ejus.* And Anselm

writ to Paachalis II., in the point of investiturea determined by that pope against the rights of the kingdom, that *audientes rex et principes ejus, ipsi etiam episcopi et alii minoris ordinis tam graviter acceperunt, ut assererent se nullo modo huic rei assensum præbituros, et me de regno potius quam hoc servarent expulsuros, et a Romana ecclesia se discessuros.* Epist. Anselm. MS. quoted above, cap. iii. § 6.]

<sup>9</sup> Henry VIII.

<sup>10</sup> Statutes, 26<sup>o</sup> Hen. VIII. c. 1; begun the third of November and ended the eighteenth of December, 1533.

sided in the crown, and which I believe it will be a difficult task to disprove them in.

123 8. For those two articles <sup>1</sup>Paulus III. accuses the king of, as heretical and schismatical, viz. *quod Romanus pontifex caput ecclesiae et Christi vicarius non erat, et quod ipse in Anglicana ecclesia supremum caput existebat, &c.*—for the first, I never heard it affirmed by the king in that generality the words import; for the pope is a temporal prince, as well as a spiritual father; and so far as I know he never denied him to be the head of the church of his own dominions, nor of France and Spain, &c., if those kingdoms will admit him to so great a pre-eminence. The thing he only stood upon is, that he was not so instituted by Christ universal bishop, and had alone from him such an omnipotency of power as made him absolute monarch in effect of the universal church, and was so in England. For his being vicar of Christ in that sense other bishops may be said to be his vicegerents (as <sup>2</sup>before), I do not see how it can be well denied him; but that this vicarship did import the giving him that power he did then exercise here, is what the church of England hath ever constantly denied. As for the king's being head of the church, I have before shewed he neither took it, nor the parliament gave it, in other sense than the French have always attributed it to their princes: neither, for aught I find, was it so much sought by king Henry, as pressed on him by the clergy, of which the bishop of Rochester was one that subscribed to it; and his ancestors did the same things before, he did after, under the names of 'protectors,' 'tutors,' <sup>3</sup>*Christi vicarii, Domini agricolæ, &c.*

9. For the other particulars mentioned in the bull,—as his beheading the bishop or cardinal of Rochester, the burning of Becket's bones, the taking the treasure and ornaments at his shrine, to which may be added the suppressing and converting into lay hands the monasteries of the kingdom—I 124 shall not say much, having not taken on me to defend that prince's actions. Yet for the taking off the head of

<sup>1</sup> Bulla Pauli III. [dat. Rom. 3 Kal. Septemb. 1535. Vid. 'Magnum Bullarium Romanum,' Vol. I. p. 707.]

<sup>2</sup> Cap. iii. § 72.

<sup>3</sup> Spelman. Concil. [Tom. I.] pp. 437, 438, c. 7, 8: Selden. Not. ad Eadmer. p. 155, ll. 7, 17. [See before, cap. v. § 14.]

Rochester (if he were convict of treason), I must give the answer <sup>4</sup> of Edward III. to the clergy in that kind, *endroit de clercs convictz de treson, pur ceo que le roi, et touz ses progenitours ont este seisis tut temps de faire juggement et execution de clercs convictz de treson devers le roi et sa roiale mageste, come de droit de la corone, si est avis au roi, que la leie en tieu cas ne se poet changer*—and then he cannot be said to have died otherwise than by law. As for the goods and ornaments of churches by him laid hold on, it is certain his predecessors in their extremities had shewed him the way; as the <sup>5</sup> Conqueror, who took all the ready money was found in religious houses; <sup>6</sup> Richard the first, who did to the very chalices of churches; and yet the archbishop afterwards <sup>7</sup> *regio munimine septus... universos monachorum* (to wit, of Christ Church) *redditus et oblationes tumbae beati martyris Thomae fecit saisiari in manu regis*; <sup>8</sup> and Edward the first, 1296, *fecit omnia regni monasteria perscrutari, et pecuniam inventam Londonias apportari, fecitque lanas et coria arrestari, &c.* And in those days bishops did tell kings, <sup>9</sup> *Thesaurus ecclesiae vester est, nec absque vestra conscientia debuit amoveri*: to which the king, *Verum est, thesaurus noster est ad defensionem terrae contra hostes peregrinos, &c.* And perhaps it would be no hard labour to shew, all princes, not only here but <sup>10</sup> elsewhere, to have had (how justly I will not determine) a like persuasion. And he then being excommunicated by Paulus III. for maintaining what the crown had ever been in possession of, can no way be said to have departed from the church; but the pope to have injuriously proceeded against him, who maintained only the just rights and liberties of his kingdom, according to his coronation oath.

10. And this is the case, and fully answers (so far as it

<sup>4</sup> Rot. Parl. 25<sup>o</sup> Edw. III., en le Feste de Seinte Hillar', § 60.

<sup>5</sup> Florent. Wigorn. A.D. 1070, p. 636.

<sup>6</sup> Gulielm. Neubrigensis, Rerum Angl. Lib. iv. c. 35.

<sup>7</sup> R. de Hoveden, A.D. 1198, p. 780, l. 53, etc.

<sup>8</sup> Thom. Walsingham, p. 65, l. 4, etc.

<sup>9</sup> Gervas. Dorobern. col. 1554, l. 44, etc.

<sup>10</sup> [E. g. "The emperor (Charles V.), now in his wonted necessity for money, was advised by his council to seize upon the revenues of the church: for which also he obtained a breve from the pope." Herbert's Hist. of Henry VIII. p. 588, A.D. 1544. This spoliation was, however, deferred till the time of his son; Charles having been supplied in some other way.]

125 appears to me) whatsoever can be objected against the reformation begun by him, or made more perfect by Edward VI, for the manner of doing it, viz. that they as supreme princes of this kingdom, had a right to call together their own clergy, and with their advice to see the church reformed by them. And if otherwise, I should desire to know how the mass without any intermission was restored by queen Mary: for it is manifest, she returned the use of it immediately after her brother's death, and yet cardinal Pole reconciled not this kingdom to Rome till the thirtieth of November, above a year after; and then too <sup>1</sup>on such conditions only as the parliament approved: during which space, she as queen gave <sup>2</sup>directions to the ordinaries how they should carry themselves in several particulars; which as it is probable she did by the advice of her bishops, so there is no reason to condemn the like proceedings in Edward VI.

11. I have <sup>3</sup>before shewed how far the royal power went in compiling the book of Common Prayer: for a catechism published by the same prince, it being composed by a learned person, presented to the king, and by him committed to the scrutiny of certain bishops and other learned men, *quorum judicium* (says <sup>4</sup>his majesty) *magnam apud nos auctoritatem habet*, after their allowance it was by him recommended to be publicly taught in schools. Likewise the 'Articles for taking away diversity of opinions in points of religion' were agreed upon in a synod at London by the bishops and other learned men, *et regia auctoritate in lucem editi*—the king in framing them taking no farther on himself, than he had in the book of Common Prayer. And queen Mary, though she quitted the title of "head of the church," (which yet she did not so suddenly as Saunders intimates) did in effect as much. So that hitherto there is no way of fixing any schism on the English church for neglect of obedience, it having been ever subject to the archbishop <sup>5</sup>of Canterbury and others,

<sup>1</sup> Statutes, 1<sup>o</sup> & 2<sup>o</sup> Phil. & Mary, c. 8.

Liturgies of K. Edward VI.: Parker Soc. edit.]

<sup>2</sup> See Fox, Acts and Monuments, Vol. III. p. 31, [ed. 1684.]

<sup>3</sup> [Archbishop Chichele in his letter to Hen. V., March 6, 1427, speaks of "the chirch of your lond, of the wch God and ye, gracious lord, have maked me governor."] [See Vit. Hen. Chichele, by Duck, Lond. 1681, p. 35.]

<sup>4</sup> [Cap. v. § 29, etc.]

<sup>5</sup> 'Edvardus VI. omnibus Ludimatis,' ante Catechismum Breve Christianæ Discipline; dat. 20 Maii, anno regni 7: [appended to 'The Two

its lawful superiors, restoring to him the ancient right belonged to his chair, of being their spiritual pastor <sup>6</sup>next and immediately under Christ Jesus. But the kingdom being re-united to the see of Rome by queen Mary, though what I have said doth in a good part free it of schism, yet, in respect the reformation I only took upon me to defend was made by queen Elizabeth, and continued since, it will be necessary to make some more particular mention how it did pass.

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<sup>6</sup> Cap. iii. § 80.

## CHAPTER VII.

### HOW THE REFORMATION WAS MADE UNDER QUEEN ELIZABETH.

**E**LIZABETH, the daughter of Henry VIII., by queen Anne Bolen, being received by all the estates of the kingdom (assembled in parliament), and proclaimed queen, caused her sister's ambassador, sir Edward Kerne, then residing at Rome, to give an account of this her being called to the crown to Paulus IV. the pope; who being in union with France, and out with the house of Austria, then strictly joined with England, and both at odds with the French, told him, either persuaded by them, or upon his own heady disposition, <sup>1</sup>England was a fee of the church of Rome; that she could not succeed as illegitimate; that he could not go against the declarations of Clement VII. and Paulus III.; that her assuming the name and government without him, was so great an audacity she deserved not to be hearkened to: but he being willing to proceed paternally if she would renounce her pretensions, and freely remit herself to his arbitrement, he would do what lay in his power with the dignity of the apostolic see. A strange reply to a civil message, were it not derived to us by unquestionable hands, and that it came from Paulus IV., to whom it was not an unusual saying, <sup>2</sup>that he would have no prince his companion, but all subjects under his foot.' Upon this unwillingness to acknowledge her queen at Rome, the archbishop of York (who had before <sup>3</sup>affirmed no man could doubt of the justness of her title), and the rest of the bishops refused to crown her. As for that <sup>4</sup>some write, it was

<sup>1</sup> Historia del Concilio Tridentino [di Pietro Soave Polano], A.D. 1558, Lib. v. p. 420: [Scot, of the Schism of England, p. 186: Pallavicino, Hist. del Concilio di Trento, Lib. xiv. c. 8, §§ 2, 3.]

<sup>2</sup> Historia del Concilio Tridentino [di P. Soave Polano], paulo ante, [Lib. v. p. 404. The original is as follows: "Che egli era sopra tutti gli prencipi, che non voleva che alcuno d'essi si domesticasse seco... In concistoro, ed anco alla mensa, in publico, in presenza di molte persone,

diceva di non voler alcun prencipe per compagno, ma tutti per sudditi sotto questo piede."]

<sup>3</sup> See his speech at the making known of queen Mary's death to the commons, in Camden, Holinshed, Grafton, et alia.

<sup>4</sup> A true, sincere and modest Defence of English Catholiques, &c. [by Cardinal Allen] against a false, seditious, and slanderous Libel, intituled 'The Execution of Justice in England,' p. 51. [The latter treatise, written by Burleigh, was

because “they had evident probabilities and arguments to doubt that she meant either not to take the oath, or not to keep the same,” was then to be administered unto her, especially in the particular of not maintaining “holy church’s laws, in respect she had shewed an averseness to some ceremonies, as commanding the bishop of Carlisle not to elevate the consecrated host (who stoutly refused her),” and out of fear “she would refuse in the very time of her sacre the solemn divine ceremony of unction;” these are certainly without any colour, and framed since. For as for the last, the ceremony of anointing, she had it performed; as had king James who succeeded her, who <sup>5</sup>would not have his queen crowned in Scotland without it. For the other, it is altogether improbable, that he, to whom the command was by her given, would of all the rest have assented to crown her, had he conceived that a cause why it might have been denied: neither indeed did she alter any thing material in the service of the church, till after the conference at Westminster, 1559, the thirty-first of March, and the parliament ended.

2. To pass therefore by these, as excuses found out after the deed done, the true reason being (no question) something came from Rome, in pursuance of the answer given her agent; the queen, seeing she could expect nothing from the papacy, laboured to make all safe at home, or, to use her own phrase, “to take care of her own house;” and therefore (as she had reason) desired to be assured of her subjects’ fidelity, by propounding an oath to certain of them, (which is seldom a tie to other than honest hearts). But the way—men’s minds distracted in points of religion, the <sup>6</sup>law of Henry VIII., extinguishing the authority of the bishop of Rome, being very severe, for securing himself, in bringing such as did but extol the said authority, for the first offence, within the compass of a *præmunire*, and that refused to take it, of treason—was not easy to be pitched upon. Besides styling the king ‘head of the church,’ many made a scruple at; to <sup>7</sup>which effect a bill being presented to the house of commons the ninth of February, after many arguments had upon it, the thirteenth, upon the second reading it was absolutely dashed, and upon great consideration taken the fourteenth of February, a committee ap-

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published in 1583, and is also printed in Holinshed, pp. 1358 et seqq.]

<sup>5</sup> See Spotswood’s Hist. of the Church and State of Scotland, p. 381, [ed. 1677.]

<sup>6</sup> Statutes, 28<sup>o</sup> Hen. VIII. c. 10.

<sup>7</sup> Journals of the House of Commons, 1<sup>o</sup> Eliz. A. D. 1558.

pointed to draw a new bill, in which an especial care was taken for restoring only the ancient jurisdiction of the crown, and the queen neither styled 'supreme head,' nor the penalty of refusing the oath other than the being excluded from such places of honour and profit as they held in the commonwealth: yet with this proviso, that he, who had an estate of inheritance in a temporal office, and refused to take the said oath, did after upon better persuasion conform himself, should be restored unto the said estate; and that such as should maintain or defend the authority, pre-eminence, power or jurisdiction, spiritual or ecclesiastical, of any foreign prince, prelate, person, state, or potentate whatsoever (not naming the pope, as her father had done) should be three times convict before he suffered the pains of death.

3. This bill, which no doubt the pope's carriage drew on, being expedited in the house of commons, received reformation by the lords, committed the thirteenth of March to the lord marquis of Winchester, lord treasurer, the duke of Norfolk, the earls of Westmoreland, Shrewsbury, Rutland, Sussex, Pembroke, viscount Mountague; bishops, Exeter, Carlisle; barons, Clynton (admiral), Morley, Rich, Willoughby, North, no one of them then noted for protestantism; the eighteenth of March passed the lords, none dissenting but eight bishops, the earl of Shrewsbury, viscount Mountague, and the abbot of Westminster: and the same day sent to the house of commons, who upon perusal found again what to amend it in; so as it had not its perfection in both houses till Saturday, the sixth of May, when the parliament ended the Monday following, at which time only viscount Mountague and the interessed clergy opposed it. By which it cannot be questioned, but the generality of the lords did interpret that law, no other than, as indeed it was, a restoring the crown to its ancient rights; for if otherwise, without doubt there would have been as great an opposition at least made against it as some other statutes which passed that parliament met with, that the marquis of Winchester, the lords Morley, Stafford, Dudley, Wharton, Rich, North, joined with the earls of Shrewsbury, viscount Mountague, and the prelates, to have stopped.

4. But whereas some were induced to think by the generality of the words, that affirm her highness to be supreme governor as well in all spiritual or ecclesiastical causes as temporal, as if it had been an usurping upon the sacred function in

the interior (as I may say) of the church—properly belonging to them in holy orders—her majesty the same year <sup>1</sup> did declare, ‘she did not challenge any other authority than was challenged and lately used by king Henry VIII. and Edward VI.; which is and was of ancient time due to the imperial crown of this realm; that is, under God, to have the sovereignty and rule over all manner of persons born within these her realms,’ &c. And that to be the only sense of the oath she caused to be confirmed the next <sup>2</sup> parliament; at which time, a synod being held, for avoiding diversity of opinions, and establishing of consent touching true religion, &c., it did expressly declare, <sup>3</sup> they did not give to our princes the ministering either of God’s word or the sacraments, . . . . ‘but that only prerogative is given in holy scripture by God himself, that is, that they should rule all estates and degrees committed to their charge by God, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evil-doers,’ &c. And these articles were likewise confirmed by parliament, 13<sup>o</sup> Elizabeth, cap. 12, so that no man can doubt this to have been other than an acknowledgement, what princes had done formerly in all ages might be justly continued; not an introductory of a new law, but the assertion of the old right of our kings. 130

5. Another matter of great weight then likewise expedited was, the settling the public service of the church in one uniform way. King Edward VI., intending such a reformation as might serve for edification, caused certain pious and learned men to meet together, who (as it seems) taking for their pattern the practice of the primitive times, casting out of the liturgies then used such particulars as were any way offensive, shewed their scope to be, what they pretended—to reform, not make a new church or service; and thereupon had, ‘by the aid of the Holy Ghost,’ <sup>4</sup> as the act of parliament speaks, concluded on and published the book of Common Prayer, with a form of ‘administration of the holy communion, commonly called the mass.’ But nothing human is perfect at first: this book some few years after received in his time alteration, and the word “mass”—I know

<sup>1</sup> The ‘Admonition,’ in the Injunctions of Queen Elizabeth, 1559, [in Cardwell’s Documentary Annals, Vol. I. p. 200.]

<sup>2</sup> Statutes, 5<sup>o</sup> Eliz. c. 1, [§ 4.]

<sup>3</sup> Art. XXXVII. of the Synod of London, 1562.

<sup>4</sup> Statutes, 2<sup>o</sup> & 3<sup>o</sup> Edw. VI. c. 1.

not why more offensive in it than the <sup>1</sup>Augustan Confession—expunged, with some other phrases in it.

6. But for the better understanding how queen Elizabeth found this church, it will not be amiss to look a little back. Henry VIII., dying in January, 1548, leaving the Roman service, with some alterations not greatly considerable in it, the wisdom of the state—however intending a farther reformation—was not immediately to abolish it; so as the lords meeting in parliament, 1547, November the fourth, though they had the mass sung in English, yet the liturgy of the church was not common in that language till after Easter, 1548. This session, continuing till December the twenty-third, restored the communion in both kinds, upon which certain learned men by appointment met at Windsor, to consider of a decent form for the administration of it; which in March his majesty gave out, backed with a proclamation, so as at Easter it began, without compulsion of any, to be put in practice; and after Easter, several parochial churches to celebrate divine service in English, which at Whitsuntide was by command introduced into Paul's; but hitherto no book of Common Prayer extant, only the manner of administering the holy eucharist somewhat altered.

7. During this while, the archbishop of Canterbury, six bishops, three deans (doctors), and three other only (doctors), were busied in reforming the public liturgy of the church, John Calvin, of Geneva, a person then of high esteem, advertised of it, thereupon wrote to the duke of Somerset, the twenty-second of October, 1548, giving his judgment in these <sup>2</sup>words: *Quod ad formulam precum et rituum ecclesiasticorum, valde probo ut certa illa extet, a qua pastoribus discedere in functione sua non liceat, tam ut consularur quorundam simplicitati et imperitiae, quam ut certius ita constet omnium inter se ecclesiastarum consensus; postremo etiam ut obviam eatur desultorice quorundam levitati qui novationes quasdam affectant.* And taking notice of the form already had for celebrating the communion, adds this: *Audio recitari isthinc in cœna celebratione orationem pro defunctis; neque vero hoc ad purgatoriis papistici appro-*

<sup>1</sup> De Missa, [p. 30, in the 'Corpus Confessionum,' Genev. 1612]: "Fiunt missæ apud nos rite et pie, et geruntur onnia in ecclesia majore cum gravitate et reverentia, quam olim." [Cf. 'Sylloge

Confessionum,' Oxon. 1827, p. 138.]  
<sup>2</sup> Johan. Calvin. epist. Protectori Anglie; [p. 41, ad calcem Vol. IX. Opp. Amstelodam. 1667.]

*bationem referri satis scio : neque etiam me latet proferri posse antiquum ritum mentionis defunctorum faciendæ, ut eo modo communio fidelium omnium in unum corpus conjunctorum declaretur ; sed obstat invictum illud argumentum, nempe caenam Domini [rem] adeo sacrosanctam esse, ut ulla hominum ad-ditamentis eam conspurcare sit nefas.*

8. This letter, received about the <sup>3</sup>beginning of the parliament, which met the twenty-fourth of November, 1548, may have been the cause of deferring the exhibition of it to the house of commons till the nineteenth of December, 1548 ; when the consideration of it was referred to sir Thomas Smith, his majesty's secretary, a very learned knight, who returned it back again the nineteenth of January, having kept it by him a full month ; after which it was expedited and printed in March following, and the sixth of April, 1549, the [Roman] mass by proclamation removed. But this book was not so perfect, as it yielded no exceptions, whether just or not I shall not here examine—I know learned men have judged variously—it shall suffice me to say, it was again revised by Bucer, a great patron of discipline, and Martyr, both in England, and reprinted, 1552, and to aught in or of this second edition, during king Edward's reign, I have not heard any protestant did ever except.

9. In queen Mary's time divers learned men retired from the heat of persecution, and, by the favour of the magistrate, permitted a church, 1554, at Francfort, laboured to retain this liturgy ; whom Knox, Whittingham, and some others opposed so far, as one Haddon, desired to be their pastor, excused himself, and Mr Chambers coming for that end from Zuric, finding it would not be allowed, retired back again ; and sixteen learned men then at Strasburg—amongst which, this Haddon, Sandys, afterward archbishop of York, Grindal of Canterbury, Christopher Goodman, famous for his book <sup>4</sup> of obedience—remonstrated unto them, <sup>5</sup>that “by much altering the said book they should seem to condemn the chief authors thereof, now ready with the price

<sup>3</sup> Note, the printed book of the ‘Statutes’ is as if their meeting were the fourth of November ; which I conceive erroneous, as not at all agreeing with the ‘Journals.’

<sup>4</sup> [The title of this book is: ‘How superior powers ought to be obeyed of

their subjects ; and wherein they may lawfully by God's word be disobeyed and resisted.’ Genev. 1558. For the condemnation of it, see Strype's Life of Archbp. Parker, pp. 325, 326 ; ed. 1711.]

<sup>5</sup> Troubles at Frankford, p. xxii. [ed. 1575.]

of their blood to confirm it; should give their adversaries occasion to accuse their doctrine of imperfection, themselves of mutability, and the godly to doubt in that truth wherein before they were persuaded; that if they prevailed in securing the use of it, they would be permitted to join them by the first of February"—their letter bearing date the twenty-third of November, 1554.

133 10. But nothing could move them to be like St <sup>1</sup>Paul, 'all things to all that he might gain some,' or relent any thing of their former rigour; only a type of it drawn into Latin was sent to Calvin for his judgment, who returned <sup>2</sup>an answer the eighteenth of January, 1554<sup>½</sup>, somewhat resembling the Delphic oracles, 'That the book did not contain the purity was to be wished; ' 'that there were in it *ineptias*, yet *tolerabiles*; ' 'that as he would not have them be *ultra modum rigidos*, so he did admonish others, *ne sibi in sua inscitia nimis placeant*, &c. And here I cannot deny to have sometime wondered, why in these disputes the opinion of Peter Martyr, then at Strasburg, a person for learning no less eminent, was never required: but I have since heard him to have been always a professed patron of it, as one by whose care and privity it had been reformed.

11. Whilst matters went thus in Germany, certain learned men at Geneva were composing a form for the use of the English church there, which, 1556, was printed by Crispin, with this title,

*Ratio et forma publice orandi Deum atque administrandi Sacra menta, &c. in Anglorum ecclesiam, quæ Genevæ colligitur, recepta, cum judicio et comprobatione D. Johannis Calvini.*

But this did not satisfy all, for <sup>3</sup>Mr Lever, coming to Francfort to be their minister, requested they would trust him to use such an order as should be godly, yet without any respect to the book of Geneva, or any other. But his endeavours were soon rejected, as not fit for a right reformed church, and the book itself hath received since sundry changes from that first type.

12. In this posture queen Elizabeth found the church, the protestant party, abroad opposing the book of Common Prayer, few, varying in judgment, not at unity with themselves, nor well

<sup>1</sup> 1 Corinth. ix. 22.

<sup>2</sup> Johan. Calvin, Epist. Anglis Franc-

ford. [ubi supra, p. 98.]

<sup>3</sup> [Troubles at Frankford, p. xxviii.]

agreeing what they would submit unto. She hereupon caused it to be again revised by certain moderate and learned men, who took a great care for removing all things really liable to exception; and therefore where Henry VIII. had caused to be inserted into the litany, to be delivered 'from the tyranny of the bishop of Rome and all his detestable enormities,' which remained all king Edward's time—this, as what might give offence to that party, was thought fit to be struck out. And where, in the delivery of the eucharist, the first book of Edward VI. had only this clause, "The body of our Lord Jesus Christ, which was given for thee, preserve thy body and soul unto everlasting life;" and, at the giving of the cup, no other than 'The blood of our Lord Jesus Christ, which was shed for thee, preserve thy body and soul unto everlasting life'—and the second book, which was in force at his death, had removed those two clauses, and instead of them inserted, 'Take and eat this in remembrance that Christ died for thee, and feed on him in thy heart by faith with thanksgiving,' and accordingly, at the delivery of the cup; from whence some might and perhaps did infer the faithful receiver not to have a real communication of Christ's body in taking the sacrament, but only a remembrance of his sufferings—it was now thought fit both expressions should be retained, that no man might have any just cause of scandal: for be Christ's presence never so real, even by transubstantiation, in the holy sacrament, we may upon <sup>5</sup>St Paul's warrant do it in remembrance of him.

Thus at the first of her reign matters in religion passed with so great moderation, as it is not to be denied very few, or none, of the Romish inclination (if they did at any time go to mass) refused to be present in our churches during the time of divine service.

But of another thing, that likewise passed at the same time, it will be necessary to make some more particular mention.

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<sup>4</sup> [See 'The Two Liturgies of K. Edw. VI. compared,' pp. 303, 308; Ox- ford, 1841.]

<sup>5</sup> 1 Cor. xi. 25.

HOW QUEEN ELIZABETH SETTLED IN THIS KINGDOM THE  
PROCEEDING AGAINST HERETICS.

**A**NOTHER particular, no small argument of the queen's disposition, fell into consideration this parliament. Her <sup>1</sup>sister had revived all the laws of former princes against heretics, even that <sup>2</sup>of Henry IV., which her father had on weighty considerations repealed—and all proceedings against them, till they came to their very execution, pertaining to the ecclesiastic—how to find a means to preserve her subjects, and yet not leave a licence to every old heresy, new invention, fanatic spirit, to ruffle the church, and trouble the world, was a matter of no small difficulty. But for the better understanding of what then passed, it will be requisite to consider how the condemning of heresy and proceeding against heretics hath been, both here and elsewhere; how her majesty found it abroad in the christian world; and at home, how thereupon she settled it.

2. The words “heresy” and “heretic” were in the primitive church not always of so ill a sound as these latter ages have made them. <sup>3</sup>St Augustine doth name some opinions for heretical, have small affinity with divinity; and who shall read <sup>4</sup>Philastrius of heresies, must needs approve <sup>5</sup>cardinal Bellarmine's censure of him, that he accounts amongst them many are not properly heresies, as the word is now taken. The first council <sup>6</sup>of Constantinople, held 381, expressly affirms by the name of heretic to understand such as professing the same faith, yet did

136 make a separation from those canonical bishops were of their communion. But the construction what opinion was heretical,

<sup>1</sup> Statutes, 1<sup>o</sup> & 2<sup>o</sup> Phil. & Mary, c. 6.

<sup>2</sup> Statutes, 2<sup>o</sup> Hen. IV. c. 15, repealed 25<sup>o</sup> Hen. VIII. c. 14.

<sup>3</sup> De Hæresibus, c. 63, [Opp. Tom. VI. p. 17.]

<sup>4</sup> Lib. de Hæresibus, c. 54, c. 82, in Bibliotheca Vet. Patrum, Tom. IV. [col. 27, col. 41; ed. Paria. 1624.]

<sup>5</sup> De Scriptoribus, [p. 128; ed. Lugdun. 1663.]

<sup>6</sup> Can. vi. [Labbe, Tom. II. 949, b.]

did ever, so far as I have observed, belong to the spiritual magistrate, who, after the pattern held out in <sup>7</sup>holy writ, if any new erroneous opinion did peep, the neighbour bishops and clergy taking notice of it, did assemble, condemn it, and by their letters gave notice of what had passed them to absent churches: if the case were difficult, the presence of any famous clerk was desired, who for settling peace (as who would not?) was easily drawn out of his own home; so was <sup>8</sup>Origen sent for into Arabia. And that this form continued in condemning heresy till Constantine, seems to be very plain by the <sup>9</sup>proceedings against Paulus Samosatenus and divers others, remaining yet in history and the writings of the fathers. But for the prosecution of an <sup>10</sup>heretic farther than to avoid him, I know no example, till after God having given peace to his people under christian emperors, they <sup>11</sup>finding, if the church were in trouble, the state to be seldom otherwise, did provide as well for the calling of bishops to councils that might condemn heresies, as by laws to punish heretics.

3. The council of Nice therefore having, in the year 325, censured the opinions of Arius for heretical, the emperor, that had formerly granted privileges to Christians, 326, declared <sup>12</sup>*haereticos atque schismaticos his privilegiis alienos, &c.*; and that no man might be deceived by the ambiguity of the word "heretic," <sup>13</sup>Gratian and Theodosius, in the year 380, did declare who only were to be so reputed, viz. all who, *secundum apostolicam disciplinam evangelicamque doctrinam, Patris et Filii et Spiritus Sancti unam Deitatem sub parili majestate et sub pia Trinitate credamus: hanc legem sequentes, Christianorum catholicorum nomen jubemus amplecti; reliquos vero dementes vesanosque judicantes haeretici dogmatis infamiam sustinere*: and the year following did not only in January <sup>14</sup>renew the said 137edict, but in July <sup>15</sup>commanded all churches to be delivered those

<sup>7</sup> *Acts xv.*

<sup>8</sup> *Euseb. Hist. Eccl. Lib. vi. c. 37.*

<sup>9</sup> *Ibid. Lib. viii. c. 27, et inter alia c. 30.*

<sup>10</sup> *[Vid. Euseb. Lib. iv. c. 24.]*

<sup>11</sup> *Ibid. Lib. x. c. 5, [pp. 718—722]: Socrat. Hist. Eccl. in Proemio Lib. v. [p. 259, b]: Vid. Epist. Theodosii ad Cyrilum, apud Baronium, Tom. V. ad*

*an. 430, lxiv.—lxvii.*

<sup>12</sup> *Codex Theodosian. Lib. xvi. de Haereticis, § I, [Tom. VI. p. 110, ed. Gothofred.]: Vid. Euseb. de Vita Constantini, Lib. iii. c. 63, c. 64.*

<sup>13</sup> *Codex Theodosian. Lib. xvi. de Fide Catholica, § 2.*

<sup>14</sup> *Codex Theodos. de Haereticis, § 6.*

<sup>15</sup> *Ibid. de Fide Cathol. § 3.*

bishops who held that profession, *nihil dissonum profana divisione facientes, sed Trinitatis ordinem, Personarum assertiōnem, et Divinitatis unitatē, &c.*: and for the more assurance, as a mark of their being orthodox, <sup>1</sup>did hold communion with the catholic bishops of any one seat there remembered, as Damasus of Rome, Nectarius of Constantinople, Pelagius of Laodicea, Diodorus of Tarsus, Optimus of Antioch, &c.: *omnes autem qui ab eorum quos commemoratio specialis expressit fide communionis dissentiant, ut manifestos hæreticos, ab ecclesiis expelli.* Which note <sup>2</sup>Justinian likewise, in the year 541, having prescribed, goes farther, that *sacram communionem in catholica ecclesia non percipientes a Deo amabilibus sacerdotibus, hæreticos juste vocamus.*

4. Before these laws, it is not to be wondered if every one desired to be joined in communion with some one of those seats, whose bishops were so recommended for conserving the apostolic faith, for the sanctity of their manners, and for keeping schism out of the church; which being usually joined with sedition in the commonwealth, <sup>3</sup>princes seem to have an especial eye how it might be avoided, but after these edicts they certainly did it much more: and there being in the world no bishop more famous than the Roman, nor any other named in these parts of Europe than he, every one endeavoured to live united to that church, whose form the council of Nice, 325—for before that, <sup>4</sup>*ad Romanam ecclesiam parvus habebatur respectus*, as Pius Secundus writes—approving in distribution of the ecclesiastic government, and emperors now in point of belief, the Roman chair became so eminent, as, for to shew themselves orthodox, many (especially of the Latins) did hold it enough to live in the communion of that see, and the fathers in that age to give high expressions of being in union with it. <sup>5</sup>St Ambrose, shewing the devotion of his brother Satyrus in a tempest, adds yet farther as a mark of it, *Advocavit ad se episcopum . . . percontatusque ex eo est utrumnam cum episcopis catholicis, hoc est cum Romana ecclesia, conveniret*: and <sup>6</sup>St Hierome, a person very superlative

<sup>1</sup> Ibid. §§ 2, 3; et 'De his, qui super religione contendunt,' § 6.

Epist. cclxxxviii. [Opp. Basil. p. 802, D.]

<sup>2</sup> Novell. Constit. cix. in Praefat.

<sup>5</sup> S. Ambros. de Excessu Fratris sui,

<sup>3</sup> Codex Theodos. Lib. xvi. 'De his, qui super religione contendunt,' § 6, § 3.

[Lib. i. c. 47 : Opp. Tom. II. col. 1127.]

<sup>4</sup> Aeneas Sylvius, [Pius Pontif.],

<sup>6</sup> S. Hieronym. ad Damasum, [Opp. Tom. II. p. 131.]

in praising and reprehending, writing about the same time to Damasus, *Ego nullum primum nisi Christum sequens, beatitudini tue, id est cathedrae Petri communione consocior, &c.*: and, in the year 602, a certain bishop, returning out of schism *spontanea voluntate*, did swear, <sup>7</sup>*he semper in unitate sanctae ecclesiae catholicae, et communione Romani pontificis per omnia permansurum, &c.* All which in time bred an opinion, that chair could not entertain an error, and the beginning of the mark absolutely inverted; for those men who at first were, as others, sought unto <sup>8</sup>because they did conserve the religion St Peter had planted in Rome, must in after ages be only held to maintain the same doctrine because they are in that see; so that the doctrine did not commend the person, but the being in that seat, and recommended from thence, be it what it will, it ought to be received: insomuch as <sup>9</sup>cardinal Bellarmine doubts not to write, *Si papa erraret præcipiendo vitia vel prohibendo virtutes, tenetur ecclesia credere vitia esse bona et virtutes malas, nisi vellet contra conscientiam peccare*—for which he was <sup>10</sup>afterward forced to an apology; yet is not in my opinion so absurd as the <sup>11</sup>rule left by certain religious persons, 1606, to their confidants at Padua, containing *ut ipsi ecclesiae catholicæ (understanding the pope) omnino unanimes conformesque simus: si, quod oculis nostris appareat album, nigrum illa esse definierit, debemus itidem quod nigrum sit pronuntiare.*

5. But to return whence I have a little digressed: it being plain by these laws, the emperors restrained points of heresy to the catholic doctrine of the Father, Son, and Holy Ghost, the ground of the four first general councils; and others not to be esteemed heretics: in which sense I conceive sundry of the ancients take the word; as <sup>12</sup>St Hierome, when he says, ‘all heretics leave God;’ and Socrates, when he agrees such as <sup>13</sup>condemned Origen, ‘finding not to blame his opinion of the holy

<sup>7</sup> S. Gregor. Epist. Lib. x. c. 31: Indict. v.

<sup>8</sup> Codex Theodosian. Lib. xvi. de Fide Cathol. § 2.

<sup>9</sup> De Romano Pontifice, Lib. iv. c. 5. § ‘Quod autem.’

<sup>10</sup> Recognitio Libr. de Summo Pontif. p. 2, r, [prefixed to the ‘Disputations.’]

<sup>11</sup> Regul. xiii. [The rule in ques-

tion is taken verbatim from the ‘Exercitia’ of Ignatius Loyola. Vid. Exercit. Spirit. Reg. ut cum Orthod. Eccl. xiii.]

<sup>12</sup> S. Hieronym. in Hieremiam, c. xix. [Opp. Tom. V. p. 310, c.]

<sup>13</sup> Τι;ν δρθην ενσέβειαν. Socrat. Hist. Eccl. Lib. vi. c. 13.

Trinity, must confess he held the right faith : ' and <sup>1</sup> Leo the first, when in an epistle about 449, he exhorts the emperor Theodosius to consider the glory of St Peter, the crowns of the apostles, *cunctorumque martyrum palmas, quibus alia non fuit causa patiendi, nisi confessio veræ divinitatis et veræ humanitatis in Christo*, doth intimate the true faith to be contained in that profession. After these restrictions in the declaration of heresy, it is likely divers sects grew very audacious, either conceiving themselves without the compass of law, or trusting in their friends and numbers ; insomuch as Arcadius, Theodosius, and Valentinian, in the year 395, were forced to declare, <sup>2</sup> *Hæreticorum vocabulo continentur, et latis adversus eos sanctionibus debent subcumbere, qui vel levè arguento judicio catholicae religionis et tramite detecti fuerint deviare* : which <sup>3</sup> St Augustine explains, *eos utique appellant hæreticos, qui non sunt communionis eorum*, as the <sup>4</sup> council of Constantinople had before, taking the word in a larger sense than others had done. Upon which the Donatists, that were the most <sup>5</sup> furious, so as neither the persons nor goods of catholics that dwelt amongst them were safe, are more <sup>6</sup> severely censured in them than others, whose opinions were certainly more dangerous, yet whom emperors did think worthy of greater favour.

6. But whilst princes did thus by their laws only correct heretics, and the temporal magistrate execute their commands, 140 they did rarely think fit to proceed <sup>7</sup> to blood, unless perhaps

<sup>1</sup> [Leo, ep. xxiv.] [Opp. p. 114, col. 2, ed. 1639.]

<sup>2</sup> Codex Theodos. Lib. xvi. de Hæreticis, § 28.

<sup>3</sup> S. Augustin. in Psalm. lvii. [Opp. Tom. VIII. p. 395, b.]

<sup>4</sup> [Can. vi.] [Vid. Labbe, Tom. II. 950, b.]

<sup>5</sup> Codex Theodos. ubi supra, § 36. Vid. S. Augustin. Epist. lxviii. [Opp. Tom. II. p. 209]; Contra Literas Petilianis, Lib. ii. c. 83, [Tom. VII. p. 91.]

<sup>6</sup> Codex Theodos. ubi supra, §§ 37, 38, 39, 40, 52, 54, 65.

<sup>7</sup> I cannot but with the learned Wensembechius, [pp. 15 et seqq. ed. Basil. 1590] in Codic. Justiniani, Lib. i. Tit. v. de Hæreticis, understand these words ' Manichæos de civitibus pellendis et

ultimo suppicio tradendis,' not to be meant of taking away their lives ; though I am not ignorant that Celsus, the lawyer, so interprets *ultimum supplicium*. [The reference appears to be to a treatise ' de Hæreticis capitali supplicio non afficiendis,' ed. 1584, fol. 129, etc. : the author calls himself Minus Celsus Senensis, but is supposed to have been Faustus Socinus. See Placiæ, de Scriptis Pseudonymis, p. 178.] For to what use were the banishing them the city, if they were to be instantly executed ? And that law being taken out of the Codex Theodos. de Hæreticis, § 65, where those words are altogether omitted, I conceive Justinian intended by them no other but those *capitales pænae*, that were *morti proximæ*, as *metallis coercitio, in insulam deportatio-*

<sup>8</sup>against some seditious preacher; and the holy men of those times used earnest persuasions to deter any inclined to that severity, as not esteeming it to agree with the entire charity of a Christian. St Augustine, whose labours no man equalled to preserve the church from that contagion, when Donatus the pro-consul of Africa went farther than that holy man liked in that kind, <sup>9</sup>professeth he had rather be himself slain by them, than by detecting the Donatists be any cause they should undergo the punishment of death. St Prosper <sup>10</sup>remembers four bishops to have been excommunicated, 392, for being accusers of Priscillian—the first I have read of had his opinions confuted not by the word, but the sword. From whence <sup>11</sup>Baronius conceives it proceeds, that such as deliver an heretic to the secular for execution, to this day, effectually intercede he may not be punished with death; yet, as it were to mock God and delude the world, if the lay having him in his power, shall defer the doing it more than ordinary, <sup>12</sup>it is the constant tenet of the canonists, relying on a bull of Alexander IV., 1260, he is to be compelled unto it by spiritual censures, yet may not take any cognizance of the cause at all.

7. It being then the course in the primitive times, that in the proceeding against heretics, the ecclesiastic did conclude 141 what <sup>13</sup>tenets were heresy, and the temporal whether the party

*tio*, etc. *De Pœnis*, § 28. The like may serve for answer to those other rescripts in Cod. Theodos. *de Hæreticis*, § 9, § 38. It is manifest by many places of S. Augustine, as ‘*Contra Literas Petilianæ*, Lib. II. c. 86, [Opp. Tom. VII. p. 93], that there was no law during his time against the life of a heretic; and Bellarmine himself confesseth as much, *de Laicis*, c. 20, [in *Disputation*. Tom. II. p. 388, A.] But however the matter is not great, being only against particular heretics, whose deportment may be thought to have been seditious, as well as their conscience erroneous.

<sup>8</sup> *Codex Justinian.* Lib. I. *de Hæreticis*, § 8.

<sup>9</sup> S. Augustin. *Epist. cxxvii.* [Opp. Tom. II. p. 413] : *Retractationes*, Lib. II. c. 5, [Tom. I. p. 28.]

<sup>10</sup> Prosper, *Chronicon*, A. D. 392. [In the editions of Prosper, which have been

examined, only two bishops are mentioned, Ithacius and Ursacius. The death of Priscillian was petitioned against by St Martin and many other bishops. See *Bingham*, Book II. chap. iv. Sect. iv.]

<sup>11</sup> *Baron. Annal. Tom. IV.* ad an. 386, xxii.: *Vid. Joan. a Royas* [seu *Joan. de Rojas*] *Singularis* [Juris in favorem Fidei], *Sing. cvii.* § 6: [Eymeric.] *Directorium Inquisitorum*, Part. II. c. xxvii. p. 124, col. i. c: Part. III. *Quæsti. cii.* p. 648, col. i. E: *Formulas*, etc. ad finem *Praxis Judicariæ Inquisit.* pp. 524, 526.

<sup>12</sup> *Directorium Inquisitorum*, Part. III. *Quæsti. xxxvi.* : *Francis. Pegna*, *Comment. lxxxv.* Part. III. p. 563, col. 2, D: *Joan. de Rojas*, *Singul. cvii.* § 2: [de *Hæreticis*], Part. II. § 450.

<sup>13</sup> *Statutes*, 2<sup>o</sup> *Hen. V. Stat. I. c. 7.* Here I cannot but observe, *Possidius*, *de Vita Augustini*, c. 18, [Opp. August.

accused were guilty of the imputation, and likewise of his punishment—as is manifest by imperial constitutions, the writings of the ancient doctors, the custom of the catholic church, that never prayed against heretics, but heresy—did so remain at least eight hundred years after Christ: but about that time the division of the empire falling out, and episcopal consistories established through Europe, bishops did begin to claim as matters ecclesiastical, and only proper for their courts, the acting in those causes—which in some sort might be, so far as the determination what is heresy did extend. And about the year 1000, the christian world—as branches not bearing fruit in Christ, and therefore to be cast into the fire, John xv. 6—began to take that way of punishing miscreants; so in <sup>1</sup>Italy <sup>2</sup>and France, *jussu regis et universæ plebis consensu*, some were thus destroyed: and, in imitation of emperors, who had by their edicts prohibited all compliance with heresy <sup>3</sup>so far as to punish any lending for that end places to resort unto, <sup>4</sup>Alexander III., 1163, in a council held at Tours, and in another at Rome, 1179, making very strict canons against heretics, declared, *eos et defensores eorum et receptatores anathematis decernimus subjacere; et sub anathemate prohibemus ne quis ipsos in domo vel in terra sua tenere vel fovere, aut negotiationem cum eis exercere præsumat.* Of which the latter, being <sup>5</sup>registered in the canon law, is the first ecclesiastic constitution in it I have observed to condemn rather heretics than heresy. Soon after which <sup>6</sup>*publicani comburebantur in pluribus locis per regnum Franciæ, quod*

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Tom. I. p. 605], noting the manner used then in the catholic church in the condemnation of heretics, conformable to what is here specified, adds, *et hoc tale de illis ecclesiæ Dei catholicae prolatum judicium, etiam piissimus imperator Honorius audiens ac sequens, suis eos legibus damnatos, inter hereticos haberi debere constituit*—against which some had added in the margin, *Cæsar pronuntiat hæreticos*; but that shewing too apparent the custom of those times might perhaps, when the place itself was not, be regarded. The inquisitors, therefore, of Spain in their Index at Madrid, 1612, [Index Librorum Expurgatorum, Madriti, 1612; p. 24, col. 2], appoint it to be

blotted out. But this edict against the Pelagians, of whom that father speaks, is not now found either in the Codex of Theodosius or of Justinian. But see Baron. Tom. V. ad an. 419, lvii. lviii.

<sup>1</sup> Baron. Tom. X. ad an. 1000, iv.

<sup>2</sup> Ibid. Tom. XI. ad an. 1017, iv.

<sup>3</sup> Cod. Theodos. Lib. xvi. de Hæret. §§ 12, 21, 34, 36, et al.

<sup>4</sup> R. de Hoveden, A. D. 1163, p. 492, l. 36; p. 585, l. 51, etc.: apud Neubrigens. Rerum Anglicarum Lib. II. c. 15, [p. 393.]

<sup>5</sup> [Decret. Greg. IX. Lib. v.], de Hæreticis, c. 8.

<sup>6</sup> R. de Hoveden, A. D. 1182, p. 618, l. 30.

rex Anglie nullo modo permisit in terra sua, licet ibi essent perplurimi.

8. Yet the pious men of those times seem not to approve of this rigour. St Bernard, one of the most devout persons of that age—*vir plane apostolicus*, says 'Bellarmine—following the doctrine of one much more apostolic, 'explaining Cantic. ii. 15, 'Take us the little foxes that spoil the vines,' writes: *Si juxta allegoriam ecclesias vineas, vulpes haereses, vel potius haereticos ipsos intelligamus, simplex est sensus, ut haeretici capiantur potius quam effugentur. Capiantur dico, non armis; sed argumentis, quibus refellantur errores eorum, ipsi vero si fieri potest reconcilientur catholice, revocentur ad veram fidem . . . . . hoc denique velle se perhibet, qui non simpliciter 'capite vulpes,' sed 'capite nobis,' inquit, 'vulpes parvulas.'* Sibi ergo et sponsae suæ, id est catholice, jubet acquiri has vulpes, cum ait capite eas nobis: and a little after: *Quod si haereticus reverti noluerit, nec convictus post primam jam et secundam admonitionem . . . . . erit [secundum apostolum] devitandus.* Thus the holy men of the age in which they stopped first men's mouths, not with arguments but arms, did judge of it: and indeed we have not many examples of any suffered merely for conscience, till after 1216.

9. In which year, as some write, Innocentius III.,<sup>9</sup> on the ignorance or remissness of bishops in prosecution of heretics, did give beginning to the <sup>10</sup>erection of a new court, called since the Inquisition: of whose institution and use, because it hath highly served to the raising the papacy, it will be necessary to say something. He therefore at that time appointing Dominicus, a Spaniard, founder of the Dominican order, by a commission delegated from him, his inquisitor against the Albigenses in France, (without abrogating the power of episcopacy in that kind) gave to him, only a private friar, such a power, as caused divers of them to be destroyed by that authority in another prince's dominions. Though such as <sup>11</sup>I have seen do conclude 143

<sup>7</sup> De Scriptoribus Eccl. [p. 290, ed. Lugdun. 1663.]

<sup>8</sup> S. Bernard, super Cantica, Serm. LXIV. Opp. col. 758. p.

<sup>9</sup> Ludovicus à Paramo, de Origine et Progressu S. Inquisitionis. Lib. II. Tit.

1. c. I, §§ 2, 3, [p. 89, ed. Madriti, 1598]:  
J. Símanca, de Catholicis Institutionibus.

[inter 'Tractatus Illustrum Jurisconsultorum de Criminalibus Inquisitionis,' Tom. XI. Part. II. ed. Venet. 1584], Tit. xxv. § 4. [fol. 150. b].

<sup>10</sup> Paramo, de Origine Inquisitionis,  
ubi supra.

<sup>11</sup> Franciscus Pegna, Ludovicus à Paramo, [ubi supra]: Famianus Strada,

the authority he exercised to have been from Innocentius III.; yet of the time when it was granted they do somewhat disagree. Franciscus Pegna, a Spanish doctor, who published his annotations on the *Directorium Inquisitorum* at Rome, 1585—yet it seems <sup>1</sup> could not secure himself from them—<sup>2</sup> holds it to have been first committed unto him about 1200; on the other side, Paramo of the same nation, that was himself an inquisitor in Sicily, and expressly writes of that subject, is <sup>3</sup> clearly of an opinion it could not be before the conclusion of the council of Lateran; and for proof gives, in my judgment, a very probable reason, viz. that no papal decretal, or history preceding, did ever name any such inquisitor, that very <sup>4</sup> council when it treats of heresy speaks of no other judge than the bishop: now it ending about Easter, 1216 (<sup>5</sup>as I shall shew hereafter), if granted by Innocentius, it must be at some time between March and the sixteenth of July, 1216, when that <sup>6</sup>pope died. Yet I cannot omit that <sup>7</sup>Camillus Campegius, in his Additions to Zanchinus, speaks as if, after that council, friar Dominic had not his authority from the papacy immediately, but from one Bertram or Bertrand, a cardinal priest: but who that Bertram was, I confess I have not been able to satisfy myself. <sup>8</sup>Ciaconius remembers one of the name employed against the Albigenses, promoted to that honour by Innocentius III., 1212; but he styles him only a cardinal deacon, as he hath another so called that was a priest; but he was no cardinal, till Honorius III., in December, 1216, preferred him to the honour, so was not capable of serving pope Innocent in that degree.

10. But whosoever first began it, Frederic II. certainly  
144 much augmented their power, <sup>9</sup>publishing the twenty-second of

de Bello Belgico, [Decas 1.], Lib. II. p. 41; ed. Rom. 1640.

<sup>1</sup> Lettres du Cardinal D'Ossat, LIX. [p. 162.]

<sup>2</sup> In Director. Inquisit. Part. III. Comment. xxxii. p. 461, col. 1, B.

<sup>3</sup> De Origine Inquisit. Lib. II. Tit. I. c. 1, § 13; c. 2, § 3.

<sup>4</sup> Concil. Lateranens. IV. c. 6, 7, 8. [Labbe, Tom. XI. Part. I. 153, et seqq.]

<sup>5</sup> Cap. viii. § 36.

<sup>6</sup> [Chronicon Abbatis] Urspergensis, p. ccxxxiii. [ed. Argentorati, 1540]: “Obiit apud Perusium, 16 Kal. August.

1216.”

<sup>7</sup> [Additiones ad Zanchinum, de Hæreticis, c. xx.; inter ‘Tractatus de Criminalibus Inquisit. Tom. XI. Part. II. fol. 255, b]: “Concilio absoluto, Bernardus presbyter cardinalis ipsum legationis officium obtinuit, qui prædecessorum exemplo B. Dominicum inquisitorum similiiter instituit.”

<sup>8</sup> Alphonsus Ciaconius, Vit. Pontif. Roman. p. 650, col. 1; p. 663, col. 1; ed. Rom. 1630.

<sup>9</sup> Vid. Bull. Innocent. IV. dat. xi. Kalend. Junii. Pontif. anno 11<sup>o</sup>, 1254:

February, 1224, three laws at Padua, by which he did constitute the Dominicans inquisitors through the empire, yet taking all others under his protection; and appointing such as should be convict of heresy, *ut vivi in conspectu hominum comburantur, flammarum commissi judicio, &c.* That these edicts were published at the only instance of Honorius III. is very probable, in that they are not any way <sup>10</sup>recorded but in papal bulls *quoad verba*, (as I shall shew hereafter). After which, several persons in divers parts proceeded against them by commission from Rome; so as the bishop, who was the ordinary detector of heresy, had little to do, and became daily to have less and less; that although his power be not in those cases absolutely taken off, yet is so impaired, as it gives place to the inquisitor; insomuch as if one suspected of heresy be cited by him and the bishop <sup>11</sup>at the same time, his appearance must first be in the Inquisition: and the reason given is, because they have a power by a delegated commission from the pope, <sup>12</sup>whereas to the other *jure divino hæc cura incumbit in hæreticos inquirere*; and <sup>13</sup>Simanca yet more plain: *Cum episcopi non habeant secretum carcerem, nec ministros idoneos ad procedendum adversus hæreticos, non possunt servare ordinem illum qui præfinitus est inquisitoribus; quam ob rem usque eo tantum procedere debent, ut in hæreticos vel suspectos inquirant, et summariam probationem inquisitoribus secreto mittere debent.* So that what power the bishop hath in this kind from Christ, he is now become little other than agent or substitute to the inquisitor in point of heresy.

11. But these commissioners exercising their authority with fire, tortures, and the like, in short time found themselves infinitely mistaken, in expecting by such violence to render that peace in the church, and obedience in the world, the primitive fathers by the truth of their dictates, evidence of reason, and piety of their lives, drew men unto: for in some places they 145

inter Literas Apostolicas pro officio S. Inquisitionis, ad calc. Director. Inquisitor. ed. Francis. Pegna, pp. 13—15: Alexandri IV. ibid. p. 27, etc.: Clement. IV. ibid. p. 47, etc.

<sup>10</sup> Liber Sextus Decretal. Lib. v. de Hæreticis, c. 18; Gloss. ad 'Leges quas-dam.'

<sup>11</sup> Paramo, de Poteestate delegata Inquisit. Lib. iii. Quest. 2, § 109, p. 536, col. 1, [ed. Madriti, 1598.]

<sup>12</sup> Paramo, de Origine Inquisit. Lib. ii. Tit. ii. c. 2, § 11.

<sup>13</sup> De Catholicis Institution. Tit. xxv. § 5.

were <sup>1</sup>expelled by the people's fury, hardly any where continued but by strong hand ; their carriage being so full of scandal, as Clement V., in the council of Vienne, could not but acknowledge they had so exceeded the power committed to them by the apostolic see, <sup>2</sup>*ut quod in augmentum fidei per circumspectam ejusdem sedis vigilantiam salubriter est provisum, (dum sub pietatis specie gravantur innoxii) cedat in fidelium detrimentum.* For these men took upon them under the pope, not only to construe what was heresy, or complying with it, but on those imputations to imprison, fine, confiscate men's goods, to the destruction of honest people and families ; which forced some states <sup>3</sup>to limit their proceedings, bar them of prisons proper to themselves, and the wise Venetian appoint three senators to supervise their actions : insomuch as this delegated power did so decline, as notwithstanding the many constitutions of Innocentius IV., Alexander IV., and several other popes yet extant for regulating of it, out of Italy it was little taken notice of ; <sup>4</sup>in Spain it remained *obscurum debilitatumque*, till Ferdinand and Isabella, 1479, by agreement with Sixtus IV., or, <sup>5</sup>as others, 1484, with Innocentius VIII., did so renew it, as "Simanca doubts not to write, they did introduce it into that kingdom—which I conceive to be in respect of the alterations in the proceedings now used to those were formerly ; for that tribunal—in preceding times committed from the papacy to friars regulars (who most depended on Rome), and therefore said to be the pope's court—is since by this concord become in effect no other than the king's, being recommended to the care of clerks secular and lawyers, the Dominicans who formerly governed it altogether excluded, unless where the inquisitors require their counsel.

12. The style or manner [of this court] there used being,

<sup>1</sup> Vid. *Additiones ad Lambertum Schafnaburgensem*, A.D. 1232, [Tom. I. p. 257, apud 'Annales Illustr. Veter. Scriptor. de Rebus Germanicis,' ed. Francfurt. 1613] : *Johan. Trithemius, Chronic. Hirsaugiens.* A.D. 1214, [p. 171; ed. Francfurt. 1601] : *Mat. Paris, A.D. 1236*, p. 429, l. 13, etc. ; A.D. 1238, p. 482, l. 12, etc. : *Munster, Cosmographia Universalis*, Lib. IIII. p. 477 ; [ed. Basil. 1550.]

<sup>2</sup> *Constit. Clement. V.* Lib. v. de

*Hæreticis*, c. 1.

<sup>3</sup> *Vid. Istoria di Giovanni Villani, Lib. XII. c. 57*, [p. 865, in Fiorenza, 1887.]

<sup>4</sup> *Paramo, de Origine Inquisit.* Lib. II. Tit. ii. c. 2, § 13 ; c. 3, § 5.

<sup>5</sup> *Francisc. Pegna, in Director. Inquisitor. Part. III. Comment. xxxii. p. 460, col. 1, d.*

<sup>6</sup> *De Catholicis Instit.* Tit. xxxiv. § 5, [fol. 164, a]. *Vid. Pegna, ubi supra.*

that his majesty <sup>7</sup> names an inquisitor-general, whom the pope approves, and after is not at all admitted to interpose ; for that inquisitor nominates a council, of which himself is president, for number and persons as the king likes—as sometimes five, to which Philip II. added two more, and these be of the gravest divines of Spain, ever residing at or near the court, who compose all differences arising in particular courts, receive all appeals, punish the defects of agents—and relates to none but the king. Of this council, as I said, the inquisitor-general is president, whose authority is very ample ; for he nominates all provincial inquisitors and their officers (who yet enter not on their charges but by the king's allowance), whom on occasion he removes and punishes, releases all penances, appoints visitors over particular courts, and though he be directed by the rule of the canon law and papal bulls, yet on occasion varies from them—as is manifest by <sup>8</sup>these instructions, *Relinquendum est arbitrio et prudentiae inquisitorum, ut procedant juxta juris dispositionem in his, quæ hic non expresse declarantur*—is answerable to none but the king, admitting the pope either very little or not at all : insomuch as <sup>9</sup>Pius IV., 1565, sending the cardinal Buoncompagno into Spain, upon the cause of the archbishop of Toledo, committed by the Inquisition there six years before on an imputation of heresy, the king's counsel liked not he should alone examine that prelate, without joining two Spaniards both in the process and sentence. Neither did that state receive the council of Trent, 1564, by other authority than the king's only, who, by his edict of the twelfth of July, commanded the cardinals and others of his clergy to observe it, without making any mention of the pope. So that in that kingdom this catholic prince doth not take on him much less over ecclesiastic courts and causes than the king of England, however he do not style himself head of the church. And therefore <sup>10</sup>Simanca speaking of this Inquisition, plainly says, Ferdinand and Isabella *judicij ordinem, quo etiam hodie utimur, magna ex parte instituerunt.* Insomuch as if we

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<sup>7</sup> Vid. Paramo, de Origine Inquisit. Lib. II. Tit. ii. c. 4, per totum : Simanca, de Cathol. Instit. Tit. xxxiv. §§ 6, 7.

<sup>8</sup> Instruct. Hispalens. c. 28, ut citatur a Paramo, ubi supra, § 4.

<sup>9</sup> Adriani, [Istoria de' suoi Tempi],

Lib. xix. p. 1341, etc. ; Lib. xviii. p. 1237 : Illescas [Gonçalo de] Historia Pontifical y Catholica, segunda parte, pp. 739, et seqq. [en Madrid, 1613.]

<sup>10</sup> De Cathol. Instit. Tit. xxxiv. § 5.

meet it at any time termed the pope's court there, it is, no question, but a nominal appellation, of that is neither subject to his rules, nor to follow his commands, but as another will.

13. But this court in Spain, and other places conforming themselves much to the papal interest, is become very infamous, things being carried in it, as we read in <sup>1</sup>M. de Thou's excellent history, *præpostera judiciorum forma, contra naturalem æquitatem, et omnem legitimum ordinem [in jurisdictione illa explicanda]... tum etiam immanitas tormentorum, quibus plerumque contra veritatem, quicquid delegatis judicibus libebat, a miseris et innocentibus reis, ut se cruciatibus eximerent, [per vim] extorquebatur.* [And <sup>2</sup>another gives the reasons why the Flemish would not endure it to be amongst them, *parce que la dite Inquisition a des rigueurs de vraye injustice, sous pretexte de justice, et encores parce qu'en l'inquisition la vie, l'honneur et les biens de toutes personnes, mesmes des plus grandes, sont à la mercy de moines inquisiteurs*]. As indeed the directions popes have set them, do not agree I think with the practice of any standing court of justice the world ever saw: as that of <sup>3</sup>Innocentius IV. and <sup>4</sup>Pius IV., that no man shall know the names either of his accuser or that testifies against him, which <sup>5</sup>Camillus Campegius will not have communicated to those learned men the inquisitors shall call to their assistance in judgment. Another <sup>6</sup>of Pius V., that no declaratory or definitive sentence in favour of the accused, though after a canonical purgation, *posse facere transitum in rem judicatam*, but that they may again proceed *tam de antiquis quam noviter [etiam] super eisdem articulis*: which in effect is no other, but that a man once accused before them can never be freed. Of a third of the <sup>7</sup>same pope, that whosoever should strike or terrify any belonging to the said office (even a notary or servant), should assist any to escape, embezzle any writings of that court, besides

<sup>1</sup> Thuani Hist. Lib. III. p. 81, E; A. D. 1547.

<sup>2</sup> [Guy Coquille, en 'Traitez des Droits de l'Eglise Gallicane,' p. 435; ed. 1639.]

<sup>3</sup> Apud Eymeric. Director. Inquisit. Part. II. p. 136.

<sup>4</sup> Bulla Pii IV. dat. 1 Nov. 1561, [inter Liter. Apostol. pro Inquisitione, ad calc. Director. Inquisit. p. 126.]

<sup>5</sup> "Constanter asserere audeo, quod nec ipsis peritis totus processus integraller cum nominibus et circumstantiis publicandus est." Additio ad Zanchinum, c. xiv. fol. 248, b.

<sup>6</sup> Bulla Pii V. dat. 12 Kalend. Jan. 1566, ubi supra, p. 132.

<sup>7</sup> Bulla Pii V. dat. Kalend. April. ibid. pp. 135, 136.

the being by that bull declared *anathema*, should be guilty of treason, and suffer according as men found culpable *primo capite dictæ legis*, their children subject to the paternal infamy, to be not only incapable of succeeding in the father's inheritance, but of receiving any legacy from friend or stranger, or attaining any place of dignity whatsoever; and others of the like nature. [It shall suffice their power and practice is so excessive, so scandalous, as Franciscus Pegna, who writ in Rome, 1584, to direct and justify the proceedings of the said court, says plainly: <sup>8</sup> *Si inquisitores vellent potestates suæ omne imperium exercere facile ad seditionem cunctos commoveret.*]

14. Certain it will not be easy (at least to my understanding) to prove these proceedings of a court christian to agree with those rules and examples Christ himself hath left us in holy scripture: but the pursuing these maxims, and the like, hath brought a great obloquy upon it, so as it is held an undoubted truth, the Inquisition under the Spaniard hath an eye rather to <sup>9</sup>empty the purse, and is upholding more for temporal ends, than to cure the conscience. And to this purpose it may not be here unfitly remembered, that a Spanish inquisitor, employed by Philip II into Sicily, writes, it is found amongst the records of that kingdom, <sup>10</sup> *quod quando in anno 1535, fuit limitata seu suspensa jurisdictio temporalis hujus sancti officii in aliquibus casibus per invictissimum Carolum V. felicis memorie, jurisdictio spiritualis causarum fidei fuit in suspenso, et quasi mortua*—which I take no other than a confession, the church, which it maintains, without the temporal power would fail and come to naught; as indeed <sup>11</sup>cardinal Bellarmine somewhere in effect confesseth, that to restrain ecclesiastic jurisdiction to spirituals, that pertain to the soul, is to reduce it to nothing.

15. But because I am here entered upon this fining or confiscation of the goods of a lay person by a spiritual judge, on the conviction (or rather imputation) of heresy, it will not be amiss to see how the ecclesiastics have gained that addition to the

<sup>8</sup> [Directorium Inquisit. Part. III. Comment. ix.]

<sup>9</sup> Adriani, [Istoria de' suoi Tempi], Lib. xvii. p. 1288, c: Historia del Concilio Tridentino [di P. Soave Polano], Lib. viii. p. 776.

<sup>10</sup> Paramo, de Origine Inquisit. Lib. ii. Tit. ii. c. 2, § 17.

<sup>11</sup> Responsio ad Oppositiones F. Pauli Servitæ [Vid. Opuscula, ed. Colon. 1617, Tom. VII. col. 1141, B.]

power left them by Christ ; which is so necessary, as without it, 149 that only was committed to them from him, which the ancient fathers practised, would be as it were dead. It cannot be denied, princes did in former times by their edicts impose pecuniary penalties on some actions concerned religion—so did <sup>1</sup>Theodosius, 392, on such as did ordain, or were ordained *in hereticis erroribus* ; which law a <sup>2</sup>council held in Africa about 404, (provoked by the inhumanity of the Donatists), did petition the emperor Honorius might be of force against them : but never any holy bishop of those times took upon him to confiscate any man's estate for his opinions, much less to damnify the son for the father's tenets ; and the lawyers do expressly resolve, <sup>3</sup>*si pena alicui irrogatur...ne ad heredes transeat*, and give this reason, <sup>4</sup>*pena constituitur in emendationem hominum, quæ, mortuo eo in quem constitui videtur, desinit* ; again, no man is *alieni criminis successor*. And accordingly, many <sup>5</sup>imperial constitutions do expressly provide, the catholic children of heretical parents—though the father were deprived of them—should succeed in their paternal goods ; and thus it stood, for aught I know, for above a thousand years, the christian world thinking it hard the son should suffer for an erroneous persuasion of the father, neither did ever any holy bishop for that space (unless as deputy to some prince) take upon him that way of punishing, and if any did, it was not approved in him.

16. In the year 1148, <sup>6</sup>the archbishop of Canterbury called by Eugenius III. to a council at Rheims, the king denied him passage : yet he stole thither ; for which on his return he was expelled England. Into which notwithstanding he got, shrouding himself, as it seems, in those tempestuous times, and to make himself the more formidable, interdicted divine service through the kingdom (which is the first experience the nation ever had of that censure). To this the prior of St Augustine's 150 refused to yield obedience : and the archbishop having now

<sup>1</sup> Codex Theodos. Lib. xvi. de Hæreticis, § 21.

<sup>2</sup> Concil. Afric. c. 60, [Labbe, Tom. II. 1108] : Baron. Annal. Tom. V. ad an. 404, cxxiii.

<sup>3</sup> Digest. de Pœnis, leg. xx.

<sup>4</sup> Ibid. et leg. xxvi.

<sup>5</sup> Codex Theodos. de Hæreticis, § 40, A.D. 407 : Codex Justinian, de Hæreticis, §§ 4, 9, A.D. 530 : Novell. Constit. cxv. c. 3, § 14, A.D. 541.

<sup>6</sup> Vid. Gervas. Dorobern. col. 1363, etc. col. 1366, l. 1 ; col. 1666, l. 20: W. Thorn, col. 1807, l. 52, etc.

made his peace with Stephen, got the sentence confirmed from Rome; upon which <sup>7</sup> *omnes sacerdotes in hoc monasterio servientes, . . . præter censuram ecclesiasticam, ad gravem pecuniam redemptions, contra juris aequitatem et sanctorum patrum decreta, coegerit.* On this complaint being made to the pope, he wrote unto him, <sup>8</sup> *Sicut nobis significatum est, homines ejusdem monasterii, pro participatione excommunicatorum, præter ecclesiasticam poenam fuerunt ad redemptions coacti;* and thereupon commands him, *quatenus omnia quæ hac occasione sunt eis ablata sine vexatione restitui facias: nolumus enim ut nova in vestra ecclesia inducantur, &c.*—so that certainly it did but then begin to bud; and after 1160, Alexander III. <sup>9</sup> condemns the use of the archdeacons of Coventry, who *pro corrigendis excessibus et criminibus puniendis, a clericis et laicis poenam pecuniariam exigunt,* affirming it seemed to proceed *de radice cupiditatis et avaritiae:* yet the same pope in a <sup>10</sup> council at Rome, 1179, appoints the goods of heretics to be confiscated, but gives not at all any authority to the spiritual judge in the execution of it; and at the compiling of the Decretals by Gregory IX., <sup>11</sup> that particular is omitted.

17. But not long after, Innocentius III., that *vere stupor mundi* and *immutator saeculi*, as <sup>12</sup> Matthew Paris styles him, about the year 1200 <sup>13</sup> appointed the goods of heretics under his jurisdiction should be confiscated, and out of it the like to be done by the secular magistrate, upon pain of ecclesiastic censures; adding from certain <sup>14</sup> imperial constitutions, that it being only an act of mercy, that the children of such as commit treason have their lives spared, when they lose their goods, and the crime far greater to offend God than man, that the severity should not give scandal to the faithful, in seeing children exposed to misery for the parent's offence, there being many cases wherein, according to the divine justice, sons may be punished for the father's fault, which he leaves the canonists to

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<sup>7</sup> W. Thorn, col. 1808, l. 63, etc.

<sup>12</sup> Hist. Minor, ad an. 1217.

<sup>8</sup> Ibid. col. 1809, l. 55, etc.

<sup>13</sup> Decretal. Greg. IX. ubi supra, c.

<sup>9</sup> [Decretal. Greg. IX. Lib. v.] de Poenis, c. 3.

10: Innocent. III. Epistol. Lib. III. Regist. xv. ep. 1, [p. 302, ed. Tolos. 1635.]

<sup>10</sup> Apud R. de Hoveden, p. 586, l. 9: Concil. Lateran. III. c. 27, [Labbe, Tom. X. 1523, A.]

<sup>14</sup> Codex Theodos. Lib. XIV. de Sua-riis, § 3: Codex Justinian. Lib. IX. 'ad legem Julianam Majestatis,' § 5, 'Filiis,' etc.

<sup>11</sup> [Decretal. Greg. IX. Lib. v.] de Hæreticis, c. 8.

justify by the examples of Canaan, the children in Sodom, of Achan, &c., as I do the reader to <sup>1</sup>seek in them. But it seems to me an hard gloss, from prophetic speeches of the primitive times, or extraordinary examples, when God himself directed what he would have done, for us now to conclude a practice lawful, contrary to express precept, Deut. xxiv. 16; Jer. xxxi. 30; Ezech. xviii. 20; made good likewise by the ordinary <sup>2</sup>use of those times. Besides, I am not satisfied with the reason, that temporal lords punishing treason with the heir's loss of estate, heresy being an offence of the same or a worse nature against the divine majesty, children ought so to suffer. For doubtless all treason against a prince presupposeth malice to his person or government—and therefore we do not read that for merely casual misfortunes, such as Tyrell's in England, or Montgomery's in France, men have been so punished—and for that they take away the offender's life upon the first fact, which the ecclesiastic <sup>3</sup>pardons: now questionless heresy is out of an erroneous opinion the holder hath of pleasing God.

18. This of Innocentius III. I take to be the first papal constitution in the kind; yet some sixteen years before it, divers of several qualities being discovered in that part of the Netherlands was then within the province of Rheims, the archbishop and earl of Flanders joined in an edict, *ut deprehensi incendio traderentur, substantiae vero eorum sacerdoti et principi resig- narentur.* [And in the year 1178, Raymund, earl of Toulouse and others, sent by the kings of England and France as assistants to Peter, cardinal of St Chrysogonus, for discovering certain heretics about Toulouse, finding one rich who adhered to them, *ab illis præceptum est, ut res illius confiscarentur et turres ejus, quas proceras et pulcherrimas habuit, demolirentur.* But this confiscation I take not as proceeding from the ecclesiastics; for, on relaxation in some measure of the penance, it was agreed his possessions should be restored, those towers

<sup>1</sup> Alphonsus à Castro, de Justa Hæretic. Punitione, Lib. II. c. xi. [Opp. ed. Paris. 1571, col. 1267, etc.]: Simanca, de Catholic. Institut. Tit. ix. §§ 5, 6, [fol. 125, a]: Joan. de Rojas, Singularia Juris, etc. LXVI. §§ 5, 6: Vid. S. August. Question. super Josue, Lib. VI. c. 8, [Opp. Tom. IV. p. 202.]

<sup>2</sup> 2 Kings xiv. 6: 2 Chron. xxv. 4.

<sup>3</sup> [Decretal. Greg. IX.] de Hæret. c. 9.

<sup>4</sup> Chronicon Auctarium Aquicincti- num, A.D. 1183, p. 236, [inter 'Rerum toto orbe Gestarum Chronica,' opera Miræi, Antwerp. 1608.]

<sup>5</sup> [Vid. R. de Hoveden, p. 573, l. 47, etc.]

indeed demolished, *et ipse daret domino suo comiti Tolosano quingentas libras argenti*—so that it seems what was done in this kind to have been by the lay, who had the benefit of it.] After this in <sup>6</sup>the council of Lateran, 1215, under the same pope it was again established, *bona damnatorum (de haeresi) si laici fuerint, confiscentur; si vero clerci, applicentur ecclesiis a quibus stipendia perceperunt.*

Nine years after which, Fredericus II. published those laws at Padua, of which before; in which he did especially establish the confiscation of their goods, and is the first imperial constitution of that kind; which remain nowhere now entire save in some <sup>7</sup>papal bulls, as of Innocentius IV., Alexander IV., and <sup>152</sup> Clement IV.,—as is noted in *Decretal. Lib. Sext. de Hæreticis*, c. 18. *Gloss. ad verb. 'leges quasdam'*,—yet some part of them are now inserted into <sup>8</sup>the *Codex* of Justinian, under the titles of *authenticæ*, or *nova constitutio Frederici II.*, 'de statu et consuetudinibus,' &c.—as I have touched before.

19. But these laws, though they confiscated the goods of heretics, did not appoint how they should be employed; insomuch as the same emperor, being that very year, 1224, at Palermo in Sicily, <sup>9</sup>expressed his intent to all his officers through the empire, but more especially in that kingdom, that whereas formerly his exchequer did receive the benefit of those confiscations, they should be divided into three parts, viz. one third *fisco*, another *apostolice sedi*, and the other third *eisdem inquisitoribus*. After which <sup>10</sup>Innocentius IV., 1252, did appoint a distribution, in some sort imitating him, as did likewise <sup>11</sup>Alexander IV., including as liable to the same punishment such as were receivers of heretics: to <sup>12</sup>which Clement IV., 1265, added, that the houses in which heretics were found, to be destroyed without hope of re-edifying, the materials sold, and a threefold division made, &c. These deprivations, confined hitherto

<sup>6</sup> Concil. Lateran. IV. c. 3, [Labbe, Tom. XI. Part. 1. 148, c]: De Hæreticis, c. 13.

<sup>7</sup> Vid. Literas Apostolicas pro Officio S. Inquisitionis, ad calcem Director. Inquisit. edit. a Francisco Pegna.

<sup>8</sup> Lib. I. de Episcopis, § 'Statuimus: et de Hæreticis, § 'Gazaros,' etc.

<sup>9</sup> Apud Paramo, de Origine Inquisit. Lib. II. Tit. ii. c. 2, § 8; p. 198.

<sup>10</sup> Bull. Innocent. IV. dat. Idibus Maii, 9 Pontificat. Vid. 'Magnum Bularium Romanum,' Tom. I. p. 91, etc. et Literas Apostol. ad finem Director. p. 11.

<sup>11</sup> Ibid. p. 33, n: dat. Anagniæ, 2 Kalend. Decemb. 1259.

<sup>12</sup> Ibid. p. 50, n: dat. Perusii, 3 Non. Novemb. 1 Pontif.

to Italy only, Boniface VIII., 1295, or rather <sup>1</sup>1297, publishing the sixth book of the Decretals, made general; decreeing, <sup>2</sup>*bona hæreticorum ipso jure decernimus confiscata*: whereupon, and some other by him then inserted into the canon law, bishops laboured to draw from the inquisitors part of the profits thus distributed; but <sup>3</sup>Benedict XI., 1303, did absolutely prohibit that *tanquam juri absonum*. After which, because (as it seems) the clergy were not free from prosecuting men only for their estates, Clement VII., in the council of Vienne, 1311, 153 strictly <sup>4</sup>enjoined, *ne prætextu officii inquisitionis, quibusvis modis illicitis ab aliquibus pecuniam extorqueant*; and likewise, *ne scienter attentent ecclesiarum bona, ob clericorum delictum, prædicti occasione officii fisco etiam ecclesie applicare*—changing what the council of Lateran had before established.

20. Notwithstanding so grave admonition from the pope, their agents did not carry themselves without scandal in this kind, by reason of an <sup>5</sup>outrage arising from a Franciscan inquisitor, 1346, in Florence; a scrutiny was had of his actions, and found he had raised from the citizens seven thousand florins of gold in two years, as compositions, or fines, upon the imputation of heresy, yet never less in the town; but any erroneous or less cautious word was censured as criminal. This drew the Florentines to conform themselves to the usages of Perugia, Spain, and other parts, in making a law, no inquisitor should condemn any citizen or borderer pecuniarily; but, if an heretic, send him to the fire. By which we may gather, these bulls were not generally received in the world; for then in Spain the ecclesiastic did not fine men, and now the king there hath the benefit of those confiscations. In <sup>6</sup>France they do not to this day impose on the laics *amendes pecuniaires*, but only on the clergy, which must be expended *en aumosnes* and *œuvres pitoyables*, not to the enriching themselves, &c. Neither doth

<sup>1</sup> Odoricus Raynaldus, *Annal. Eccl.* Tom. XIV. ad an. 1297, § 41.

<sup>2</sup> Liber Sextus Decretal. Lib. v. de Hæret. c. 19. Vid. c. 17, 18.

<sup>3</sup> Extravagant. Decret. Commun. Lib. v. de Hæret. c. 1.

<sup>4</sup> Constit. Clement. Lib. v. de Hæret. c. 2.

<sup>5</sup> Istoria di Giovanni Villani, Lib. xii. c. 57, [pp. 865, 866, 867.]

<sup>6</sup> 'Arrest de la Cour de Parlement, à Paris, le 27 Juin, 1542,' en 'Preuves des Libertez de l'Eglise Gallicane,' c. xxxviii. § 9, p. 1082. [Vid. cap. xxiii. § 49, p. 696.]

the wise Venetian permit confiscating of estates to arise from any sentence of theirs, but that is to devolve to the next heir. I do not here mention the constitutions of Boniface, archbishop of Canterbury, 1260, nor of Stratford, 1343, in this kind ; because of the first little reckoning was made, and the second did only refer to commutation of penance, which the law allows : he that would may find them in Lyndewode, Lib. iii. *de Immunitate Ecclesie*, cap. ‘*Accidit*;’ and Lib. v. *de Poenis*, cap. ‘*Evenit*.’

21. If any ask a cause, why the ancient fathers did proceed with so great lenity against blasphemous heretics, 154 as the Arians, Nestorians, &c. ; why, when the <sup>7</sup>emperor would have punished the furious Donatists with a pecuniary mulct, the holy men of those times so earnestly interceded as to procure the remission, and did requite their fury with such love and meekness, <sup>8</sup>as to be able to say, no one of them had paid what the imperial edicts might challenge—when of late years men have been brought to the fire, children exposed to misery by the loss of their parents’ estates, even by bishops and other of the clergy, whose opinions were neither so blasphemous as the Arians’, nor their comports so inhuman as the Donatists’—why they preached, men <sup>9</sup>relapsed, even to a thousand times, might yet live reconciled to the church ; when as now such as have renounced an opinion Rome calls heresy, being after found to hold it, is <sup>10</sup>*sæculari judicio sine ulla penitus audientia relinquendus* ; which yet is not observed if he be a prince, as was Henry IV., or perhaps a private man out of their power—

22. To these demands I can give no other answer, but that their offences being against the holy Trinity, the pious bishops of those times, as men who watched for souls, did content themselves to denounce what was heresy, but having done that, finding it not received, to leave the punishment to him, who assures it shall be more tolerable for Sodom and Gomorrah than those refused their instructions, and, under him, to the secular magistrate ; did likewise follow his precept, in forgiving

<sup>7</sup> S. August. Epist. lxviii. [Opp. Tom. II. p. 209.]

<sup>8</sup> S. August. contra Literas Petiliani, Lib. ii. c. 83, [Opp. Tom. VII. p. 927.]

<sup>9</sup> Χιλιάδες μετανοήσας είσελθε. So-

crates, Hist. Eccl. Lib. vi. c. 21.

<sup>10</sup> Decretal. Greg. IX. Lib. v. de Hæret. c. 9 : Liber Sextus, Lib. v. de Hæret. c. 4 : Simanca, de Cathol. Instit. Tit. lvii. § 10.

even to <sup>1</sup>seventy times seven times : when on the other side, the opinions of these later heretics (as they call them) be rather against men and their institutes, than God, as that <sup>2</sup>*Romanum præsulē reliquis episcopis parem esse, purgatorium ignem nullum inveniri, celebritates sanctorum rejiciendas, jejuniis ab ecclesia institutis nihil inesse meriti, &c.*; and a persuasion gained, none but the ecclesiastic can <sup>3</sup>punish heresy, who judge the opposer by the law of man, howbeit they style it christian,  
 155 yet how it agrees with divinity I remit to the canonists' decision. In the mean time I cannot but observe, <sup>4</sup>*Simanca* finds nothing out of holy writ, but only in divine Plato, Lib. x. *de Legibus*, to maintain the position that *semel tantum haereticis penitentibus parcitur, &c.*

23. This being then the proceeding against heretics in general, it will be necessary to see how it was formerly in England, and how the queen found it. First, it will not be unfit to premise, <sup>5</sup>that from the conversion of the Saxons to the year 1166, no heresy was ever known to have been in England; insomuch as we may safely conclude, whatever doctrine we meet with in the public homilies of the church, or other writers of elder times, must be esteemed catholic, however it now stand censured : but in that year, about thirty Dutch came hither, that detested baptism, the eucharist, &c., who being convict by scripture, in an episcopal council, called by the king at Oxford, were remitted to his disposition, that caused them to be whipped and burned in the face, and a command given none should either receive or relieve them, so that they miserably perished : which severity his majesty did not think fit afterward to extend to those were then called *publicani*, as I have before <sup>6</sup>shewed, though there were many in his dominions. [But in king John's time some of the Albigenses coming hither, divers of them being taken, *viri combusti sunt, et sic tandem ab orbe illo fugati sunt*, says <sup>7</sup>*Waldensis.*]

24. For the punishment of heretics, it cannot be doubted

<sup>1</sup> Mat. x. 15; xviii. 22.

<sup>2</sup> *Æneas Sylvius, Histor. Bohemic. c. 35, [Opp. Basil. p. 103, c: p. 104, d.]*

<sup>3</sup> *Lyndewode, Provinciale, Lib. v. de Haereticis, cap. 'Item quia' [p. 296, not. f]: "Cognitio haeresis et ipsius punitio pertinet ad Episcopos."*

<sup>4</sup> *De Cathol. Instit. Tit. lvii. § 10.*

<sup>5</sup> *Gul. Neubrigensis, Rerum Anglic. Lib. ii. c. 13.*

<sup>6</sup> § 7.

<sup>7</sup> *[Thom. Waldensis, Doctrinale Antiq. Fidei, in Prolog. Martin. V.]*

by the common law (that is the custom of the realm) of England to have been here, as in other parts of the world, by consuming them by fire. <sup>8</sup>Balæus, from the testimony of a chronicle of London, reports one of the Albigenses to have been so made away there, 1210; Waldensis speaks as if there were more so destroyed, to which the <sup>9</sup>learned Camden seems to allude, when he says more died in queen Mary's time, than this nation had seen *ex quo regnante Johanne, christiani in christianos apud nos flammis sævire coeperunt.* And of the truth of the thing 156 there is no question; for <sup>10</sup>Bracton writes of an apostate deacon, that in a council held at Oxford, 1222, by Stephen Langton, was first degraded, and then by the lay committed to the fire: with whom for the thing agrees <sup>11</sup>Fleta; yet, by the way, where you read in him *per manum comburentur clericalem*, it is to be *laicalem*, for so is <sup>12</sup>Bracton, out of whom he transcribed it, agreeing with the continual practice both of this and other nations; for the clergy meddles not with execution.

25. In Edward the third's days, about the year 1347, <sup>13</sup>Polydore Vergil testifies two Franciscans to have been burnt, *quod de religione male sentirent.* Neither did William Sautry, a relapsed priest, die by any statute law <sup>2</sup>Henry IV., but, convicted in a provincial council of the archbishop of Canterbury, the writ *de hæretico comburendo*, bearing date the twenty-sixth of February, was by the advice of the lords temporal sent to the mayor of London to cause him be executed; <sup>14</sup>attendentes, says it, *hujusmodi hæreticos . . . . convictos et dampnatos, juxta legem divinam, humanam, canonica instituta, et in hac parte consuetudinaria, ignis incendio comburi debere.* But where <sup>15</sup>Walsingham speaks as if he died during the sitting of the parliament, by virtue of <sup>16</sup>the law then made against heretics, the historian is without peradventure mistaken; for that parliament, begun about the twentieth of January, ended the tenth of March following, did expressly provide, on the

<sup>8</sup> De Scriptor. Illustr. Britan. Cent. iii. c. lxxv. [p. 258; ed. Basil. 1557.]

<sup>9</sup> Apparatus ad Annales Eliz. [p. xvi.]

<sup>10</sup> [De Legibus Angliæ], Lib. III. de Corona, c. 9, § 2; fol. 124, a: Britton, [de Arsouins], c. 9, fol. 16, b, [ed. Lond. 1640].

<sup>11</sup> Fleta, [seu Commentarius Juris

Anglicani] Lib. I. c. 29, § 7; [ed. Lond. 1685.]

<sup>12</sup> [De Corona, Lib. III. c. 9, § 2, fol. 124, a.]

<sup>13</sup> Angl. Hist. Lib. xix. p. 382, l. 38.

<sup>14</sup> Rot. Parl. 2<sup>o</sup> Hen. IV. § 29.

<sup>15</sup> Ypodigma Neustræ, A.D. 1401, p. 556, l. 48.

<sup>16</sup> Statutes, 2<sup>o</sup> Hen. IV. c. 15.

petition of the commons, <sup>1</sup> que toutz les estatutz et ordinances faitz ou a faire en cest parlement que sont penalx, ne tiegnent lieu ne force deuant le feste de Pentecoste proschein venant, lesqueles en le mesme temps puissent estre proclamez : to which the answer is, *Le roy le voet*. So that certainly he could not die by that law, which was not to take effect till so long after, [and when he suffered was not a law].

157 26. But I confess I did a little doubt of two particulars : the one, whether by the common law a layman could be sent to the fire for any conviction by the ecclesiastic ; for all the undoubted precedents I have met with, unless that of the Albigenses were otherwise, are of some clerks, within the pale of the church, that were so punished ; and Bracton and Fleta both agree, *clericci apostatae comburantur* ; whose words being penal, I conceived *stricti juris* not to be construed by equity. But indeed Fleta elsewhere speaks more generally, *christiani apostatae* <sup>2</sup> *detectari debent et comburi* ; and <sup>3</sup> Britton, of miscreants so to be served, without distinction of the quality ; with whom sir Edward Coke concurs. Another thing I questioned, whether any bishop within his diocese alone could convict one of heresy before 2<sup>o</sup> Henry IV. cap. 15 (of which hereafter) ; for whatever the power of the ordinary was, there is very little example of his putting it in exercise before the times of Wickliff —

27. Who began to be taken notice of about the end of Edward III., or rather the beginning of Richard II. ; in whose doctrine, at least that they fathered on him, though there were good corn, yet was it not without tares. But when it grew common, and to be hearkened unto, the prelates laboured to procure <sup>4</sup> a law, his majesty's commissions should be directed to the sheriffs and other his ministers, 'to arrest all such preachers, and also their fautors, &c. .... to hold them in arrest and strong prison, till they will justify themselves according to the law and reason of holy church.' How this passed I should be glad to learn ; for not only <sup>5</sup> the printed statutes, but <sup>6</sup> the roll of parliament expressly mentions the commons agreeing to those acts, yet the <sup>7</sup> next meeting they do disclaim to have given any assent

<sup>1</sup> Rot. Parl. 2<sup>o</sup> Hen. IV. § 116.

<sup>2</sup> I read it 'detectari' ; not, as the print, 'detractari,' [Lib. I. c. 37, § 2.]

<sup>3</sup> De Arsounis, c. 9, fol. 16, b.

<sup>4</sup> Statutes, 5<sup>o</sup> Ric. II. Stat. 2, c. 5.

<sup>5</sup> Ubi supra.

<sup>6</sup> Rot. Parl. 5<sup>o</sup> Ric. II. Pars II. § 17.

<sup>7</sup> Rot. Parl. 6<sup>o</sup> Ric. II. Pars I. § 53.

unto it, *laquel ne fuist unques assentu ne grante par les communes, mes ce que fuist parle de ce, fuist sanz assent de lour; que celui estatut soit annienti*: to which the king's answer is, *Y plest au roi*. How it fell out this latter was not counted an act, <sup>8</sup>sir Edward Coke hath shewed, which tells us why it passed again without opposition in <sup>9</sup>queen Mary's days. I wish that learned gentleman had given his opinion how the record came to be so faulty, as to affirm a concurrence of the lower house to that they never assented. 158

28. In king Henry the fourth's time his successor, that <sup>10</sup>law passed, which greatly increased the power of the ordinary, allowing him to imprison, fine, determine all causes of heresy, according to the canonical decrees within three months [after the arrest]; on which words 'canonical sanctions' the bishops so behaved themselves, <sup>11</sup>'that hardly the most expert and best learned man of the realm, diligently lying in wait upon himself, could not eschew and avoid [the penalty and danger of] the same act and canonical sanctions, if he should be examined upon such captious interrogatories as is and hath been accustomed to be ministered by the ordinaries of this realm, in cases where they will suspect of heresy.' Upon which, if any did refuse obedience to his diocesan in aught, <sup>12</sup>as paying a legacy, &c. there would be means found to bring him within the suspicion of heresy. And certainly the proceeding of some diocesans upon this statute gave quickly scandal: for only nine years after, we find the commons petition, <sup>13</sup>*que plese a notre seigneur le roi grauntier, que si ascun soit ou serra arrestu par force de l'estatut fait l'an de votre règne seconde, al requeste des prelates et clergie de votre roialme d'Engleterre, qu'il purra estre lesse a mainpris, et faire sa purgation, franchement sanz destourbance d'ascuny, en mesme le conte ou il est arrestu; et que tiels arrestes soient desore en avaunt faitz en due fourme de ley, par les viscont, mairs, baillifs, ou constables notre seigneur le roy, sanz violent affray, ove force et armes, ou depredation de lour biens, ou autre extortio[n] ou injure queconque en celle partie a faire*. But to this, *Le roy se voet*

<sup>8</sup> Institutes, Part III. c. 5, p. 41.

<sup>9</sup> Statutes, 1<sup>o</sup> & 2<sup>o</sup> Phil. & Mary, c. 6.

<sup>10</sup> Ibid. 2<sup>o</sup> Hen. IV. c. 15.

<sup>11</sup> Ibid. 25<sup>o</sup> Hen. VIII. c. 14. § 1.

<sup>12</sup> Sir Edw. Coke's Institutes, Part III. c. 5, p. 42.

<sup>13</sup> Rot. Parl. 11<sup>o</sup> Hen. IV. § 29.

159 *ent aviser* is all the answer given. But whereas <sup>1</sup> Walsingham speaks of this parliament as infected with Lollardy, certainly to me there is no such thing appears in the 'Roll,' but rather the contrary. But I confess I did think before that law of Henry IV., no bishop in his diocese, without a provincial council, could have convicted any man of heresy, so as to have caused him been burnt; for man's life being a point of so high concernment in the law, and heresy laying so great an imputation on the party, it seemed not to me probable, every angry bishop in his court should alone have power of determining what was by the canonical sanctions so esteemed, and whose words or writings could admit no other sense than heretical. And with this it seemed to me the practice did concur, for the deacon burnt at Oxford suffered after conviction in a provincial synod; and the conviction of William Sautry shews plainly to have been after the same manner, <sup>2</sup>the writ running, *Cum venerabilis pater Thomas, &c. de consensu et assensu, ac consilio coepiscoporum, ac confratrum suffraganeorum suorum, nec non totius cleri provinciae suae, in concilio suo provinciali congregato, juris ordine in hac parte requisito, in omnibus observato, &c.*—intimating, as it seemed to me, if otherwise, the order of law had not been observed. And I did ever conceive this law had increased the power of the ordinary, as well in permitting him singly to pursue the canonical sanctions in convicting an heretic, as in fining and imprisoning of him; especially the statute <sup>3</sup>of queen Mary, that gave it life after the repeal of Henry VIII., affirming, before such revival the ordinary did want authority to proceed against those that were infected with heresy. But I have since found <sup>4</sup>better opinion it was otherwise. [ *Judicet lector.* ]

29. After this, <sup>2</sup> Henry V., <sup>5</sup>a parliament at Leicester enacted, "that the chancellor, treasurer, justices of the peace, sheriffs, &c. should take an oath for destroying all manner of heresies, commonly called Lollardries, to be assistant to the ordinary therein; persons convict of heresy to lose their fee-simple land; justices of the king's bench, of the peace and of 160 assize, to enquire of all holding any errors or heresies as Lollards,

<sup>1</sup> Thom. Walsingham, [Hist. Angl.]  
A. D. 1410, p. 378, l. 54.

<sup>2</sup> Rot. Parl. 2<sup>o</sup> Hen. IV. § 29.

<sup>3</sup> Statutes, 1<sup>o</sup> & 2<sup>o</sup> Phil. & Mary, c. 6.

<sup>4</sup> Sir Edw. Coke's Institutes, Part III. c. 5, p. 39.

<sup>5</sup> Statutes, 2<sup>o</sup> Hen. V. Stat. 1, c. 5.

their maintainers, receivers, fautors, &c., and for that end a clause to be put into the commissions of justice of the peace. Yet forasmuch as the cognizance of heresy, errors, and Lollardries belonged to judges of holy church, and not to the secular, that the indictments taken by them not to be evidence, but for information before the spiritual judge, into whose hands the person suspected to be delivered within ten days after his indictment; every man impanelled in the inquest for the trial of them to have in England five pounds, in Wales forty shillings in land by the year.” Which three laws were each repealed by Henry VIII. or Edward VI., and again restored by queen Mary, under whom, by colour of them, had in less than three years been spoiled for religion more christian blood of her subjects, than in any prince’s reign since Lucius. [For those they made to punish Lollardry were by her converted to the extirpation of catholics, and such doctrines as had been established for orthodox by the universal consent of the kingdom, both clergy and lay, at least in the times of two her immediate predecessors. A late <sup>6</sup> writer —who yet professeth he will not take on him to discuss or excuse her proceedings in every particular, because, in my opinion, he found it impossible—as cardinal <sup>7</sup> Allen before, will have her severity to have extended only against innovators in religion; her party sticking close to what our and their forefathers professed. But this is to beg the question; for what innovation did the English reformers bring into the church? Was it one to have the clergy reform the public liturgy? To declare the ancient canon of scripture? To affirm the power, the papacy held in England, to have been only *jure humano*? To restore the use of the cup in the eucharist? To retain the faith of the <sup>8</sup>homily read in the Saxon church, touching the eucharist; and with <sup>9</sup>Bellarmino, <sup>10</sup>Cajetan, <sup>11</sup>Roffensis, to affirm that ‘transubstantiation (or the change of the substance of bread and wine) in the supper of the Lord, cannot be proved by holy writ,’ and there-

<sup>6</sup> [Scot, of the Schism of England, pp. 81, 82.]

<sup>7</sup> [Allen, against the ‘Execution of Justice in England,’ Lib. i. c. 3; pp. 34, etc.: if it be his, for it hath no name.]

<sup>8</sup> [Vid. infra, cap. ix. § 23.]

<sup>9</sup> [De Eucharistia, Lib. IIII. c. 23], [in Disputat. Tom. II. p. 160, A.]

<sup>10</sup> [Commentar. in tertiam Partem Thom. Aquinatis Quest. LXXV. Art. i. in principio], [fol. 396, b; ed. Rom. 1527.]

<sup>11</sup> [Adv. Lutheri Babylonicam Capitativitatem, c. x.] [Fischer. Opp. col. 227; ed. Wirzburgi, 1597.]

fore no article of the faith? Nay, if any one moved with what he says should precisely form an inquisition, whether it were not rather an innovation and farther distant from the practice of the ancient holy fathers, to burn such as did out of conscience maintain no other doctrine than they had been taught in the days of Henry VIII. and Edward VI., and is and hath been received for catholic by the universal attestation of all ages—and, if opposed by any, by a very few, in comparison of the number of Christians dispersed throughout the universe, and they lately sprung up too—I do not know, I say, how he would extricate himself. But of this more in the next chapter].....

30. Things standing thus when queen Elizabeth came to the crown, the ecclesiastic authority exercised at home and abroad with rigour and austerity, rather than christian mildness; still to permit that was the continuing a fire to consume her people, and yet for every one to think and do without control what him list, was to let loose all reins of government, to leave open a door for sedition to disquiet her kingdom, and the commonwealth perhaps not to be ever in peace: her majesty therefore took a middle way to agree with the primitive times, and yet not let every profane humour disturb the church, by <sup>1</sup>erecting a court with power 'to visit, reform, order or correct any errors, heresies, schisms, &c., which by any spiritual or ecclesiastical power, authority, or jurisdiction can or may lawfully be reformed, ordered, redressed, corrected, restrained or amended; yet restraining them from adjudging any thing to be heresy, that had not been heretofore adjudged such by the express and plain words of the canonical scriptures, or by the first four general councils, or any of them, or by any other general council, wherein the same was declared heresy by the express and plain words of the canonical scripture, or that should hereafter [be judged such] by the parliament, with the assent of the [clergy in their] convocation.'

31. From whence ariseth a question of some intricacy, how it came to pass those times spake with so great submission to the four first general councils, and yet so restrained the other, without expressing which they were, nor any other particular concerning them. For the solution of which, we are to know, those have been ever looked on by the catholic church

<sup>1</sup> Statutes of the Realm, 1<sup>o</sup> Eliz. c. 1, § 20.

with more reverence than any other that ever yet were held. The <sup>2</sup>emperor Justinian, 541, declared which they were, and that he did receive *earum dogmata sicut sanctas scripturas, et regulas sicut leges observamus*; who made not the like mention of the fifth, though <sup>3</sup>called by him, and held in his time. Neither did Gregory the Great, who did reverence them, <sup>4</sup>*sicut sancti evangelii quatuor libros*, make the same esteem of the fifth; for having made honourable mention of it in a letter to a queen of Lombardy, sent by a bishop of Milan, the bishop gave it her not on an opinion she might be scandalized at his naming of it: upon which <sup>5</sup>St Gregory sent him word he did well, and in that altered his epistle. And the year following, viz. 596, <sup>6</sup>the people of Ravenna opposing one Maximianus in being their bishop, as not of sound belief, in that he did not carry so great veneration to the council of Chalcedon, he doth assure them of the contrary, that he did receive those four councils, but makes no mention of the fifth. I do not deny but <sup>7</sup>the faith of the fifth and sixth were by this church approved, yet never any of them had that great reverence yielded their dictates the first four had, which are therefore said to have been <sup>8</sup>*synodi firmissimæ* by *Ælfric*, in his canons to *Wulfin*.

32. But these, however of this high esteem, [and sometimes called <sup>9</sup>general], yet had not that name commonly appropriated unto them till somewhat after; for certainly that distinction 162 was not suddenly brought into the church, in that sense it is now taken, many synods by our writers being styled general, to which yet the obligation was never of that nature, as if they did not or could not err. <sup>10</sup>Eadmerus writes, *Anselm* told *William II.* *generale concilium episcoporum, ex quo rex factus fuisti, non fuit in Anglia celebratum*: and the like phrase is used very frequently for English councils not only in him, but in our other

<sup>2</sup> Novell. Constit. cxxxii. c. 1: Codex, Lib. 1. de Summa Trinitate et fide Catholica, § 4.

<sup>3</sup> Concil. Constant. [in Concil. ed. Labb. Tom. V. 3. On the question of convention, see *Fleury*, Liv. xxxviii. s. 43, who ascribes it to Justinian.]

<sup>4</sup> S. Gregor. Epist. Lib. 1. c. 24, Indict. ix.

<sup>5</sup> Ibid. Lib. iii. c. 37, Indict. xii.

<sup>6</sup> Ibid. Lib. v. c. 102, Indict. xiv.

<sup>7</sup> Bed. Hist. Eccl. Lib. iv. c. 17: Concil. Calcuth. c. 1, apud Spelman. [Tom. I.] p. 293.

<sup>8</sup> *Ælfrici Canones ad Wulfinum*, apud Spelman. [Tom. I.] p. 581, can. 33. Vid. Egbert. Archiep. *Capitula de Sacerdotali Jure*, § 4: apud Spelman. p. 278.

<sup>9</sup> [Euseb. de Vita Constant. Lib. iii. c. 6.]

<sup>10</sup> Eadmer. p. 24, l. 7.

eldest and best historians, as <sup>1</sup>Florentius Wigornensis, <sup>2</sup>Simeon Dunelmensis, <sup>3</sup>Huntindon, <sup>4</sup>Gervasius Dorobernensis, <sup>5</sup>Hoveden, &c. <sup>6</sup>Matthew Paris speaking of a council held at Westminster, 1175, calls it *concilium generale*; which in <sup>7</sup>Diceto is changed to *concilium regionale*, and in the margin added—out of the MS. copy sometimes belonging to St Albans, and now at St James's (the best and fairest I ever saw), and which I conceive Matthew Paris himself used—*solius papæ est concilium generale, Romæ ecclesiae et Constantinopolitane est concilium universale*: which I know not how he will make good, having <sup>8</sup>the third and fourth council of Carthage, <sup>9</sup>and one held there 403, the [second] council <sup>10</sup>of Matiscon, and others, to contest with; which being no other than particular, as we now esteem them, have in their acts the titles of being universal councils. So the fourth council <sup>11</sup>of Toledo is said to have been general; as by Eymericus another <sup>12</sup>in Tarragona.

33. Now of such as have been so called, it is manifest the value set on them is altogether vanished, and was so long since. <sup>13</sup>Malmsbury records, the councils held by Anselm were in his time become *obsoleta*, their credit lost: and so we may say of the rest, for <sup>14</sup>Lyndewode is very clear no English councils oblige this church before, 1222, Stephen Langton held one at Oxford. As for those which the popes called as patriarchs of the west, which Diceto conceives were properly general, the rite

163 of former times was, never to send hence more than four bishops unto them; which when it came in question, 1179, <sup>15</sup>*episcopi Angliae constanter asseruerunt, quod ad generale concilium domini papæ quatuor episcopi de Anglia tantum Romam mittendi sunt*: which is so full a testimony of his having no absolute power over our bishops, not so much as to cause them

<sup>1</sup> [Chronicon], A.D. 1044, p. 625.

<sup>2</sup> [Historia], A.D. 1044, col. 180, l. 23.

<sup>3</sup> Hen. Huntindon. [Hist. Lib. VIII.]

<sup>4</sup> 395, l. 23.

<sup>4</sup> [Chronica], col. 1369, l. 62.

<sup>5</sup> R. de Hoveden, A.D. 1044, p. 439, l. 56; A.D. 1200, p. 806, l. 17.

<sup>6</sup> Hist. Minor, sub ann.: et Hist. Major, p. 131, l. 29.

<sup>7</sup> Col. 585, l. 63.

<sup>8</sup> Concil. Carthag. III. c. 7, [in Con- cil. ed. Labb. Tom. II. 1168, c.]: Concil. Carthag. IV. in proœmio, [ibid. II.

1198, c.]

<sup>9</sup> Concil. African. I. [Vid. Labb. ibid. II. 1104, b.]

<sup>10</sup> Concil. Matisconense II. c. 20, [ibid. Tom. V. 987, d.]

<sup>11</sup> Concil. Toletanum III. in proœm. [ibid. V. 1003, a.]

<sup>12</sup> Directorium Inquisit. Part. II. Quæst. lvi. p. 381, col. 2, z.

<sup>13</sup> De Gestis Pontif. p. 228, l. 6.

<sup>14</sup> Provinciale, Lib. v. de Pœnis, cap.

<sup>15</sup> 'Ad hæc,' [p. 319, not. s.]

<sup>16</sup> R. de Hoveden, p. 582, II. 34, 35.

meet in council, as there cannot well be a greater; and therefore when he imposed the oath (of <sup>16</sup>which before) on them, one clause was, *Vocatus ad synodum veniam, nisi præpeditus fuero canonica præpeditione.* Yet in after ages the going thither did only remain at the prince's pleasure, <sup>17</sup> who gave them authority *consentiendi, et, si opus fuerit, dissentendi his, quæ juxta deliberationem dicti concilii inibi statui et ordinari contigerit.* All which I have spoke of general councils, that the reader may know, when he meets that phrase in any author, he is not necessarily to conclude the writer to have conceived an obligation of following whatever they said, nor that he held it to have been void of error; for it is unquestionable, they and we give the name to such synods as were esteemed full of imperfections, far from that freedom ought to be in general councils; to whose canons they did not hold themselves tied.

34. But because in these cases examples of former times do more convince men's judgments, than present affirmations, to give some instances, not of other than of such as have been <sup>18</sup>lately printed, and with that title, at Rome; as the council of Vienne, 1311, which by <sup>19</sup>Gisburnensis, who lived about that time, is noted to have been nothing less than a free council: the book is not printed; I will give you the whole therefore as I find it in him:

*Dominus papa Clemens tenuit concilium suum Viennæ anno Dom. MCCCXI. primo die mensis Octobris: in quo quidem concilio tres fecit sessiones.*

I. *In prima sessione, facto sermone, exposuit clero tres 164 articulos super quibus erat principaliter tractandum, et consulendum; . . . super negotio Terræ Sanctæ, quomodo posset recuperari et tueri, et super ordine Templariorum, qui pro nullo habebatur; præcepitque omnibus prælatis, et singulis qui converabant, quod super præmissis articulis usque ad secundam sessionem deliberarent.*

II. *In secunda sessione facta est longa disputatio de ordine Templariorum, utrum stare posset, vel deleri de jure*

<sup>16</sup> Cap. iii. §§ 50, 51.

<sup>17</sup> Vid. Selden. Notæ ad Eadmer. p. 214, l. 40, etc. 'De potestate commissa Ambassiatoribus Regis ad interessendum Concilio Basiliensi.'

<sup>18</sup> Rom. 1608 & 1612.

<sup>19</sup> Gualterus Hemingford Gisburnensis, [de rege Edw. II. in C. C. C. Library, Cambridge, N<sup>o</sup>. C. pp. 245, 246.]

deberet. *Et erant pro ordine Templariorum prælati quasi omnes, præter prælatos Franciæ, qui propter timorem regis Franciæ—per quem, ut dicebatur, totum illud scandalum fuerat—aliud facere non audebant. Erant enim in toto concilio—quod concilium dici non merebatur, quia ex capite proprio omnia fecit dominus papa, non respondente neque consentiente sacro concilio—baculi pastorales circa cxxx.*

III. *In tertia sessione dominus papa [sedit] pro tribunali, et ab uno latere rex Franciæ, ab altero rex Navarræ filius ejus: surrexitque quidam clericus, et inhibuit sub pena excommunicationis majoris, ne aliquis loqueretur verbum in concilio, nisi licentiatuſ vel requisitus a papa. Recitatoque processu Templariorum, adjecit papa, 'Quod licet ex processu præhabito ipsum ordinem de jure delere non posset, tamen ex plenitudine potestatis ordinem delevit, nomen et habitum, terras eorum et possessiones Hospitalariis conferendo, aggregando, et uniendo.'*

35. The like may be said of the council of Lateran under Innocentius III., in which there was only *recitata*—as what the pope had before concluded on—*capitula lxx., quæ aliis placabilia, aliis videbantur onerosa, &c.* Which with the great extortion then exercised on the prelates appeared in it, the little credit it gained in England, might justly cause <sup>2</sup>the *Antiquitates Britannicae Ecclesiæ* write it to end *in risum et scomma*: which words are none of Matthew Paris, but of the author's; though 165 the marginal note against them in the edition of Hanau, 1605, hath given an occasion of mistake, which should have been placed five lines lower, as it is in that of London, 1572: for that he there speaks of the prelates borrowing to satisfy the papal avarice, is, as archbishop Parker, or whosoever else composed those lives, thus delivered in <sup>3</sup>*Historia Minor*: *Tunc autem temporis solutum est concilium generale: papa vero prælatiſ potentibus licentiam repatriandi minime concessit. Immo a singulis auxilium in pecunia postulavit, quam recessi cum viaticis cogebantur a mercatoribus curiæ Romanae*

<sup>1</sup> Mat. Paris, [Histor. Major] A.D. 1215, p. 272, l. 26. *Lege tamen Capitula lxx.*

<sup>2</sup> [p. 158, l. 47, ed. Hanov.]: p. 151,

l. 19, ed. Lond.

<sup>3</sup> Mat. Paris, *Hist. Minor*, ad an. 1216. *Vid. Vitas S. Albani Abbatum,* p. 117, ll. 39, 43.

*duris conditionibus mutuare, et sic cum benedictione papali ad propria remeārunt . . . Per idem tempus, instante festo Paschali, &c.*

36. This I have the rather transcribed, because some are of opinion that council ended, 1215; which certainly it did not, till towards Easter the year following; and then too abruptly—the pope called away on a sudden for appeasing the wars growing in Italy, the sixteenth of July 1216, died: which makes it without either time when it began or ended, nothing being fully concluded but the expedition against the Saracens, for the recovery of the Holy Land. Of this I have made the more particular mention, for that having given advertisement of it to doctor Wats—who hath with great sincerity and judgment put out Matthew Paris—that he might clear the archbishop in his *Adversariis*, I know not by what fate, he applies his note to p. 138, l. 5, which refers to the council held there by Alexander III., 1179, when it should have been to p. 272, or p. 274, l. 6; and thinks he called the ‘Lives of the Abbots’ the *Historia Minor*; who I am ‘persuaded never saw that book, but did write candidly what he found in *Historia Minoris*.

37. But that this council was never received generally here, is manifest, in that divers canons in it were not of force in England, as the third, the forty-first, the forty-sixth, to which I may add the very first; for though <sup>5</sup>Peckham, sixty-six years after, did make a constitution in that point; yet he did, to my understanding, not speak of Christ’s presence in the eucharist so grossly, nor determine it to be by transubstantiation, as the first chapter of the other doth—but of that hereafter. And whosoever shall peruse <sup>6</sup>Simon Sudbury’s ‘Constitutions,’ 1378, touching confession, will find so much variation from the twenty-first chapter of that synod, as he cannot think he took that for a rule not to be varied from. And it is observable, that <sup>7</sup>Peckham provides the punishment of the negligent conserver of the holy sacrament to be, *secundum regulam concilii generalis*, meaning the twentieth chapter of this I speak of; which had it been of force otherwise, he had no doubt commanded the due

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<sup>4</sup> See the Preface to Matthew of Westminster, p. 5.

<sup>5</sup> Lyndewode, Provinciale, Lib. I. de Summa Trinitate, cap. ‘Altissimus’ [p. 8.]

<sup>6</sup> Apud Lyndewode, Provinciale, Lib. v. de Pœnitentia et Remissionibus, [p. 342.]

<sup>7</sup> Ibid. Lib. III. de Custodia Eucharist. [p. 247.]

observance of it, not by his command added strength to the rule there given. [And in the same council, cap. 'de apostatis,' of such as after a religious vow relinquish it, having established how they should be treated, he adds: <sup>1</sup> *Hanc autem ordinationem non extendimus, cum quibus sedes apostolica aliter ordinavit*—which assuredly proves the English church had a right of controlling the determinations of Rome; for otherwise it had been vain to save that it might not contradict, nor extend unto.] It is true, Stephen Langton, to ingratiate himself with Rome—whom he had so much displeased, as <sup>2</sup>the pope intended to remove him from his archbishopric on the king's desire, but stopped on the intercession of the court, and his being a cardinal—did at the end of his synod at Oxford, 1222, enjoin the council <sup>3</sup>of Lateran, held under pope Innocent, in the paying of tithes and other litigious <sup>4</sup>causes, to be observed, *et in synodis episcopalis constitutiones illius concilii, una cum istis, prout videbitur expedire, 'exponi volumus et recitari'*:—which last words Binius hath changed, I know not on what authority, to '*volumus observari*', when questionless the English took them for advice, not a precept: and their little regard of them appears by the particulars mentioned. Neither doth Lyndewode make any mention of this part, though he have, I think, all the rest were agreed there: and is itself altogether omitted in some old

167 copies of that council I have seen; one of which is joined with the MS. 'Annals of Burton Abbey,' in sir Thomas Cotton's library. But the acts of this council being, with divers others, printed at the end of the Constitutions of Otho and Othobon at Paris, 1504, and since by Binius transferred into his third tome, the second part, this is alleged by some men, as if what passed at

<sup>1</sup> [Spelman. Concil. Tom. II. p. 338 et apud Lyndewode, de Apostatis, in fine] [p. 306.]

<sup>2</sup> Mat. Paris, Hist. Minor, ad an. 1216, § Barones.

<sup>3</sup> Which Council of Lateran this was, is uncertain, whether that under Innocent II. or this by Innocent III.; but most likely that under Innocent III., at which himself was present.

<sup>4</sup> Binius [Concil. General. et Provin- cial. Tom. VII. Part. ii. p. 833, c; ed. Paris. 1636] reads 'et aliis capitulis,' thereby adding strength to every Chapter

of that Council: when certain the reading should be, according to ancient copies, 'in præstatione Decimarum et aliis causis,' referring only to what past there touching Tithes, and the payment of them, by the Cistercian Order, for land acquired after that time, which several Acts of Parliament afterwards confirmed. As for the other Constitutions there propounded, he after gives the rule with what caution they were to be expounded and recited, as they should be held expedient, and not otherwise.

Lateran had been of undoubted validity with us; when no question, what was done there hath never been taken here as the decrees of a general council, like that of Nice, &c.; but of Innocentius III., as they stand in the Decretals—compiled by Gregory IX., his nephew—with this title, *Innocentius III. in Concilio Lateranensi*, as those by him propounded, but not fully concluded in council, according to <sup>5</sup> Platina, and from which this church varied as occasion served. Yet if any shall insist this conclusion of 1222, to have been of greater validity than I speak, I must add, that if it really were made with such an intent by the ecclesiastics, it cannot be thought to have obliged us more than that declaration of the bishops, 1615, did the French; who, <sup>6</sup> having *meurement deliberé sur la publication du concile de Trente, ont unanimement recogneu et declaré, recognoissent et declarerent, estre obligez par leur devoir, et conscience, à recevoir, comme de fait ils ont receu et reçoivent, ledit concile, et promettent l'observer entant qu'ils peuvent par leurs fonctions, et auctorité spirituelle, et pastorale*, and caused the same to be printed. Yet that of Trent had never validity in France, nor the other in England, notwithstanding what thus passed the clergy.

38. Neither was that other <sup>7</sup> council of Lateran, under Innocentius II., ever received here: though the pope there <sup>8</sup> *insignem sacrorum decretorum textum concessit, yet nimis abundans per universum orbem nequitia terrigenarum corda contra ecclesiastica scita obduravit*; from whence it proceeded, that when they were divulged they did no good, *quoniam a principibus et optimatibus regnum, cum subjectis plebibus, 168 parvipensa sunt*. Now that it was never received here appears (besides this testimony), in that the marriage of a professed nun was <sup>9</sup> adjudged valid, contrary to the <sup>10</sup> eighth canon of it, and that too after it was registered in the <sup>11</sup> canon law: which shews, this church did neither admit the canons of foreign councils, nor

<sup>5</sup> [Du Pin, *de Antiqua Eccles. Disciplin. Dissertat.* vii. pp. 572, 573, quotes Platina (in *Vita Innocent. III.*) and several other writers, to prove that these decrees were not made *conciliariter.*]

<sup>6</sup> *Preuves des Libertes de l'Eglise Gallicane*, c. 14, § 3, p. 325.

<sup>7</sup> [The second Council of Lateran,

A.D. 1139.]

<sup>8</sup> Ordericus Vitalis, *Eccl. Hist. Lib. XIII.* p. 919, b.

<sup>9</sup> *Regist. Islep.* fol. 166, b, [in the Archiepiscopal Library at Lambeth.]

<sup>10</sup> [Labbe, *Tom. X.* 1004.]

<sup>11</sup> *Apud Corpus Juris Canon. Decret. Part. ii. Caus. xxvii. Quæst. i. c. 40.*

the canon law itself to alter their ancient customs; as is farther manifest by the 'Statute of Merton,' cap. 9. Neither was the council of <sup>1</sup>Sardis ever allowed in England, as is manifest by what before of appeals, which yet, by the Capitulars of <sup>2</sup>Charles the Great and Ludovicus Pius, was even in that particular in France; which made <sup>3</sup>St Bernard write of them, *in multam posse eas devenire perniciem, si non summo 'moderamine actentur. Appellatur de toto mundo ad te' id quidem, &c.*—for so the place is to be read, as I have seen in two very good MSS., and one late printed, not as in the former editions of him, as at Paris, 1586. By these precedents the reader may judge how necessary it was for the parliament to make a distinction of councils. Now in these, with sundry of as doubtful credit, being of late <sup>4</sup>printed at Rome, as if they were of equal value with the first, I have thought fit to instance. And here having made mention of receiving councils, as if that added strength unto them, it will be necessary to say something of that too, for the fuller clearing of this church.

39. The apostles, as they shewed a pattern for <sup>5</sup>holding councils to settle disputes among Christians, so Paul and Silas in their travels delivering the <sup>6</sup>decrees by them ordained to be kept by several churches, shewed it to be reasonable, such as were absent should receive what was done in any synod, before they were obliged by it; and accordingly, in the primitive times, those were not present at the holding a synod, had the results sent or brought unto them after the conclusion taken; who did

169 in their own churches subscribe—finding them just and pious—what the others had in council agreed upon, and then reposed them amongst their records, called by St Hierome <sup>7</sup>'*Scrinia publica*,' *'Ecclesiarum arcæ,' &c.* So <sup>8</sup>Cæcilian, being present at Nice, brought to Carthage the decrees there concluded, who submitted unto them; and <sup>9</sup>St Athanasius of that council says, *Huic concilio universus orbis assensum præbuit; et quanquam*

<sup>1</sup> [i. e. Sardica in Illyria, A. D. 347.]

<sup>2</sup> Carol. et Ludovic. Capitula, Lib. viii. c. 323.

<sup>3</sup> S. Bernard. de Consideratione ad Eugen. Lib. iii. c. 2.

<sup>4</sup> Concil. General. Rom. 1608 & 1612.

<sup>5</sup> Acts xv.

<sup>6</sup> Acts xvi. 4.

<sup>7</sup> S. Hieronym. adversus Luciferianos, § 5, [Opp. Tom. II. p. 143, A.]

<sup>8</sup> Concil. Carthag. vi. c. 9, [in Concil. ed. Labb. Tom. II. 1592, E.]

<sup>9</sup> S. Athanas. Epist. ad venerabiles in Aphrica Episcopos (Petro Nannio Interpretus): [Opp. Tom. I. p. 931, D.]

multæ habitæ sunt synodi, hujus tamen omnes sunt memores, tum per Dalmatiam, Dardaniam, [Cretam] aliasque insulas, . . . et plerique in Arabia hanc cognoverunt, et admirati sunt eos qui subscripserunt. And of the <sup>10</sup> council at Sardis it is recorded, "Οσιος ἐπισκοπος ἔγραψε, καὶ οὐτω πάντες ταῦτα γράψασα ἡ ἐν Σαρδικῇ σύνοδος ἀπέστειλε καὶ πρὸς τοὺς μὴ δυνθέντας ἀπαγγήσαι, καὶ γεγόνασι καὶ αὐτοὶ σύμψηφοι τοῖς κριθεῖσι τῶν ἐν τῇ συνόδῳ γραψάντων, καὶ τῶν ἄλλων ἐπισκόπων τὰ ὄνοματά ἔστι ταῦτα—which I English thus: “Osius the bishop subscribed, and so did the rest. These things being copied out, the synod in Sardis sent to those could not be present, who were of the same mind with what had been determined of those subscribed in the synod; and of the other bishops these are the names.”

40. After which <sup>11</sup> Athanasius (from whom this epistle is taken) adds, *qui igitur decretis synodi subscripserunt sunt isti . . . in universum 344.* Hence it grew, that though some councils had but few at the holding of them, yet the subscriptions were numerous. <sup>12</sup> Baronius observes the fifth council of Carthage to have been held by twenty-two only (I conceive it should be seventy-two), yet had two hundred and seventeen subscribers; which was after the ending of it, by bishops in their own churches, when they admitted of it. So the <sup>13</sup> synod of Antioch, about 341, sending their conclusions to absent churches, writ unto them, they did believe they would assent to what they had done, *et ea quæ visa sunt recta roborantes, cum consensu sancti Spiritus consignabitis.* It is of no use to dispute here, whether this were an Arian or a catholic council: be it either, it still denotes the manner then used; as doth the <sup>14</sup> third council of Toledo, held A.D. 589, which speaks thus: 170  
*Constitutiones sanctorum conciliorum, Niceni, Constantiopolitani, Ephesini, vel Chalcedonensis, quas gratissima aure audivimus, et consensione nostra veras esse probavimus, de toto corde et de tota anima et de tota mente nostra subscrisimus: and another held there, having received with the letters of pope*

<sup>10</sup> Concil. Sardicens. Epist. Append. [in Labbe, Tom. II. 678, d.]

<sup>11</sup> Epist. ad Ægyptios, etc. [Apol. ii. Opp. Tom. I. p. 768.]

<sup>12</sup> Baron. Annal. Tom. V. ad an. 419,

lix.

<sup>13</sup> Concil. Antioch. in proemio. [Vid. Labb. Tom. II. 559.]

<sup>14</sup> Concil. Toletan. III. § 23, [in Labb. II. 1005, e.]

Leo II., the sixth general council, invited all the prelates <sup>1</sup> of Spain, *ut prædicta synodalia instituta, quæ miserat, nostri etiam vigoris manerent auctoritate suffulta, omnibusque per nos sub regno Hispaniae consistentibus patescerent divulganda.*

41. By all this it is plain, the manner of former times was to disperse the decrees of councils to absent churches, who by subscriptions were said to have confirmed, and, so far as lay in them, by suffrage, to have given strength to that such meetings had agreed unto. And as popes did thus confirm what other bishops had concluded in their synods, so did they in like manner his. In the year 1095, Urban II. held a council at Clermont in Auvergne, at which were present several prelates of Normandy, who at their return brought letters from the synod; upon which William, archbishop of Rouen, caused the Norman bishops to meet there; <sup>2</sup> and they *capitula synodi, quæ apud Clarum Montem facta est, unanimiter contemplati sunt, scita quoque apostolica confirmaverunt.* It is true, the pope being the patriarch of most note in the world, and of greatest dignity in the west, usually the acts of foreign councils were directed unto him, <sup>3</sup> which he dispersed through Italy and other parts of Europe; but his approbation was not enough to oblige other churches, till what came from him was by themselves allowed: neither was this dispersing so appropriated to his papacy, as if there were never any other divulging of them; the second council of Nice, held 787 (or 788, as Diceto accounts),

171 was sent from Constantinople to Charles the Great, then only *rex Francorum*, and by him, 792, hither—where it was rejected.

42. From hence it proceeded, that part of the acts of one council did not bind some churches, which did others; as some parts of the council of Chalcedon and Ephesus seem not to have been received in Rome in <sup>4</sup>St Gregory's time; to which may be added some <sup>5</sup>canons of the seventh council. But I believe it will be hardly shewed from the ancients, that any church, neither intervening in council by proxy, nor that did after admit of it,

<sup>1</sup> Baron. Annal. Tom. VIII. ad an. 683, xxv.

p. 128.]

<sup>2</sup> Ordericus Vitalis, Eccl. Hist. Lib. ix. p. 721, n.

<sup>4</sup> S. Gregor. Epist. Lib. vi. c. 195, Indict. xv.: Lib. vii. c. 47, Indict. ii.

<sup>3</sup> Vid. Euseb. Mediolanens. Epistola, post Epist. lii. Leonis Pap. [Opp.

<sup>5</sup> Concilia General. Eccl. Cathol. Tom. III. pp. 684, 685, in margine ad Can. vi. [ed. Rom. 1612.]

were held concluded by any, though never so numerous. Certainly none was ever of greater esteem amongst catholics than the council of Nice; yet <sup>6</sup>St Augustine, in his dispute with an Arian, confesses neither the council of Nice ought to prejudice the Arian, nor that held at Ariminum him, *sed utrisque communibus testibus, res cum re, causa cum causa, ratio cum ratione concertet.* And <sup>7</sup>St Hilary, comparing two councils, one of eight bishops, which refused the word ὁμοούσιον, with that of Nice which received it, says, *Si contraria invicem senserunt, debemus quasi judices probare meliora*—so not only taking from them all infallibility, but allowing others to judge of their doings, before they submitted unto their determinations.

And this hath been the so constant observance in all times, as no age ever held the Latin obliged by the Grecian synods, which they have not received; neither doth the Greek church to this day hold themselves tied by the determinations of Florence, or to the many other of the Latin touching the procession of the Holy Ghost, and other points in difference, to which they have not submitted.

43. But for that the acts of councils, without temporal authority to enforce the observance of them, were no other than persuasive, princes—either on the incitation of their bishops, or convinced of the justness and piety of what had passed in those ecclesiastic assemblies—did often by their letters exhort, or by 172 their laws command the observance of what resulted from them. So Constantine, after the council of Nice, wrote that letter remains recorded in <sup>8</sup>Socrates and Theodore to some absent churches, for their admitting the resolutions of it: in which he tells them he had undertook that what the Romans had already, *ασμένως τοῦτο καὶ η ὑμετέρα προσδέξηται σύνετος*, “that their judgment would willingly receive.” <sup>9</sup>And Gratian, Valentinian, Theodosius did in the year 381, by their rescripts, establish the same council, as <sup>10</sup>Justinian by the law before mentioned did all the four first—which I take to be

<sup>6</sup> Contra Maximinum Arianorum Episcop. Lib. III. c. 14 [Opp. Tom. VI. p. 508, c.] Vid. etiam de Unitate Ecclesiae, c. 16 [Opp. Tom. VII. p. 364, etc.]

<sup>7</sup> De Synodis adversus Arianos, [Opp. col. 360, A.]

<sup>8</sup> Socrat. Hist. Eccl. Lib. I. c. 9, [p. 34, c.]: Theodore. Eccl. Hist. Lib. I. c. 10, [p. 34, d.]

<sup>9</sup> Codex Theodos. Lib. XVI. de Fide Catholica, § 3: de Hæret. § 6.

<sup>10</sup> § 31.

the same <sup>1</sup>St Augustine calls inserting them *actis proconsularibus*.

44. Of later times popes, having by several arts acquired the greatest part of episcopal power to be devolved to them, have likewise claimed it as a right belonging to the papacy, not only to call councils, but to determine which are general, who are to vote in them; and therefore, <sup>2</sup>though properly *ordinarie*, none but bishops have there (say they) *jus suffragii*, yet *ex privilegio et consuetudine* cardinals, abbots, and generals of orders are to be allowed voice; and that there needs no other than the pope's confirmation in Rome, to oblige all Christians to the observance of any he shall hold out for such—as Pius IV. by his bull of the eighteenth of July, 1564, declared, all in the council of Trent *juris positivi* did the world, from the first of May before, &c. And though all history agree, and the very councils themselves assure us, the causing the east and west to meet in those assemblies, to have been ever done by emperors, and that princes on occasions have called the clergy within their estates together for composing disputes in religion; yet the bare affirmation, without any real proof, hath so far prevailed with some men, as to esteem him little other than an heretic shall maintain the contrary.

173 45. But kings have not so easily parted with these rights: for the state of France, notwithstanding the many solicitations of popes from abroad, and their clergy at home, hath not hitherto been induced to approve what was determined at Trent; however you shall hardly meet with any of the Roman party, but he will tell you that the points of faith there agreed upon are received in France, but not of manners and government. Which is in a kind true, yet contains a notable fallacy; for the ecclesiastics of that kingdom, finding the difficulty of procuring that council to pass, have in their provincial synods, <sup>3</sup>*conspiratione quadam, venia in quaque diæcesi cogendi synodos impetrata*, inserted the greatest part of the doctrinal points of it into those councils; so that it is truth, they are indeed there received, yet not for that they were concluded upon in Trent, but because episcopal councils have each in their

<sup>1</sup> In Psalmum lvii. [Opp. Tom. VIII. p. 396, c.]

15 [in Disputation. Tom. II. p. 249, b.]

<sup>2</sup> Bellarm. de Conciliis, Lib. I. c.

<sup>3</sup> Bochellius, Decreta Eccl. Gallican.

‘ad Lectorem.’

dioceses, established what they could persuade *nec regibus, nec supremis parlamentorum curiis, ut synodi istius canones in acta sua referrent, et observandos publicarent.* [And in an 'arrest' of parliament, the ninth of August, 1611, certain having obtained the use of the Roman breviary, reformed according to the council of Trent, it is with this expression of being *non en vertu de la determination du pretendu concile appellé de Trente, qui n'est pas receu ny aprouvé en ce royaume, ains par le congé du roy.*] Neither hath the council of Florence under Eugenius IV., or of Lateran held by Julius II. and Leo X., been hitherto allowed by France or England; where the most zealously affected to Rome, as sir Thomas Moore, have <sup>5</sup> maintained the superiority of a general council above the pope <sup>6</sup> in opposition to either of them; though <sup>7</sup> that be a point rather of faith than manners. Upon which grounds, those councils before spoken of did not bind here, farther than what was in them hath been made good by provincial synods within the nation.

By all which it being certain, neither this church nor kingdom hath ever been tied by the acts of any foreign council not admitted here, and being perhaps a thing of some intricacy, what determinations the realm had received after the four first general councils, her majesty took the way of receiving them as absolutely necessary, but others with such limitations as are in <sup>174</sup> <sup>8</sup>the statute; and for the future, nothing to be heresy, but what should be determined to be such by the parliament, with the assent of the convocation.

<sup>4</sup> [Preuves des Libertez de l'Eglise Gallicane, c. xxxi. § 9, p. 845.]

<sup>5</sup> See his 'Letter to mayster Thomas Cromwell' at the end of his works [p. 1427, ed. 1557], and the original in Sir Thomas Cotton's Library, [Cleop. E, vi. 149.]

<sup>6</sup> Vid. Concil. Florentin. [Labbe, Tom. XIII. 1136, c.] : Concil. Lateran. v. A.D. 1516, Sess. xi. [ibid. Tom. XIV. 309, etc.]

<sup>7</sup> Bellarmin. de Conciliis, Lib. 11. c. 17, [Disputat. Tom. II. p. 267, &c.]

<sup>8</sup> Statutes, 1<sup>o</sup> Eliz. c. 1.

## CHAPTER IX.

### OF THE FARTHER PROCEEDING OF QUEEN ELIZABETH IN THE REFORMATION.

THINGS thus settled in 1° Elizabeth, the parliament ended, the liturgy of the church—commonly called the book of Common Prayer—reformed, and published; the queen, <sup>1</sup> following the examples of her predecessors, and relying on the ancient symbols as the doctrine of the catholic church, gave command the creed, the *Pater noster* and ten commandments—as the grounds for a Christian to believe, and frame his life after—should be taught her subjects, and none to presume to come to the Lord's table before they could perfectly say them in English.

2. Hitherto, to my understanding, her majesty had not done any thing not warranted by the practice of her predecessors, nor that could be justly interpreted a departing from the apostolic faith, or indeed from Rome itself; where she kept an agent, <sup>2</sup>till Paulus IV., during the parliament commanded him to relinquish the title of ambassador, and not to stir out of Rome. So that if there were any departure, it must needs be the pope made it, not the English—who was so incensed, he would not at first acknowledge our queen, nor after permit any from her in the quality of ambassador to reside with him, 175 though she had not done any thing but according to the ancient rights of the kingdom, and the usages of former princes. But suppose (which will never be proved) her majesty to have gone farther than was fit for a christian prince in settling religion, certainly she had just cause to conceive she might do it, having so many precedents of her ancestors in the case. Yet Paulus IV. breaks off all intercourse; some of his party first would not crown her, then spake of excommunicating of her—indignities no prince but must be sensible of.

3. Yet it seems, the first heat past, the queen's moderation was better received at Rome than at home; where the

<sup>1</sup> *Canones dati sub Edgardo*, p. 67: *Leges Canuti*, c. 22, p. 105. See above, cap. v. § 6, iii.

<sup>2</sup> *Camden. Annales Elizabeth. ad an. 1559*, [p. 13.]

pope, however a violent heady man, considering no doubt his own loss in breaking off all commerce with so potent a kingdom, <sup>3</sup>began to hearken to terms of accommodation, and was content things should stand as they are, the queen acknowledging his primacy, and the reformation from him. But his death ensuing the eighteenth of August, 1559, left the design to be prosecuted by his successor Pius IV., who by letters—sent by Vincentius Parpaglia, a person of great experience, employed by cardinal Pole in <sup>4</sup>former negotiations [to the pope,] and of late in that hither—of the fifth of May, 1560, directed *charissimæ in Christo filiæ Elizabethæ reginæ Angliæ*, did assure her, <sup>5</sup>*omnia de nobis tibi policeare, quæ non modo ad animæ tuæ salutem conservandam, sed etiam ad dignitatem regiam stabiliendam et confirmandam, pro autoritate, pro loco ac munere quod nobis a Deo commissum fuit, a nobis desiderares, &c.* Upon this, and their relations who then lived, and had part in the action, the English affirm Pius IV. would have confirmed the liturgy of the church of England: and indeed how can any imagine other? For doubtless nothing could have been more to her dishonour than so suddenly to have changed what she had with so great consideration established; and the pope assuring her, she might promise herself from him all he could do, I know not what less or other he could expect she would ask. But where sir Edward Coke, in his charge <sup>6</sup>at Norwich, as it is now printed, says this offer came from Pius V., I conceive it a mistake, and should have been Pius IV.—as in another place he names Clement IX., who yet never was, for Clement VIII.—and the rest of the narration there not to be without absurdities, and to be one of those deserves the author's censure, when he says, <sup>7</sup>'there is no one period in the whole expressed in the sort and sense that he delivered it;' for certainly Pius V., from his coming to the popedom, 1566, rather sought by raising against her foreign power abroad, and domestic commotions at home, to force her to his obedience, than by such civil ways as we now

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<sup>3</sup> Tortura Torti, [by Bishop Andrewes] p. 142, [Lond. 1609.]

<sup>4</sup> [Hist. del Concil. Trident. di Palavicino, Lib. xiii. c. vii. § 5, Tom. II. p. 400.]

<sup>5</sup> Camden. Annal. ad an. 1560, [pp. 47, 48.]

<sup>6</sup> ['The L. Coke's Charge, given at Norwich Assises,' Lond. 1607. It is not paged, but the passage alluded to will be found about the middle.]

<sup>7</sup> Praefat. Lib. vii. relat. [Vid. Coke's Reports, Part vii. Vol. IV. p. viii. ed. Lond. 1620.]

speak of to allure her ; though the thing itself is no question true, however there be a failure in some circumstances in the person that offered it. [And in this, I take Dr Heylin to be likewise out ; who in his <sup>1</sup>‘History of the Reformation,’ in queen Elizabeth, A.D. 1560, says this Parpaglia set not his foot on English ground, not permitted to come nearer than Brussels. Which is altogether improbable ; for how could he propound any thing to the queen (which Camden says he did), if he saw her not ? Would he be so negligent of the papal honour as to send a letter, he was to deliver himself ? If we are to credit tradition, he not only spake with her majesty, but passed from her not without a gratitude. And I conceive the learned doctor attributes to this abbot what happened to another, the year following : for of Martinengus, 1561, it is most true, as Camden, Thuanus, Lib. xxviii. [c. 20,] both the Histories of the Council of Trent record, but none mention it of this ; neither is it likely the pope, having received so peremptory a denial, would a year after adventure a second.]

4. They <sup>2</sup>that make a difficulty in believing this relation, object it to have been first divulged, 1606, forty-six years after the proffer of it : that sir Edward Coke averred to have received it from the queen herself, not then alive to contradict him. But for my part I confess I find no scruple in it, for I have ever observed the wisdom of that court, to give what it could neither sell nor keep ; <sup>3</sup>as Paulus IV. did the kingdom of Ireland to queen Mary, admitted the five bishoprics erected by her father, approved the dissolution of the monasteries made by him, &c.—of which nature this was. For the being first mentioned forty-six years after, that is not so long a time but many might remember ; and I myself have received it from persons of nigh relation unto them who were actors in the managing of the business. Besides, the thing itself was in effect printed many years before ; for he <sup>4</sup>that made the answer to Saunders his seventh book *De Visibili Monarchia*—<sup>5</sup>who it seems had been very careful to

<sup>1</sup> [p. 132 ; ed. Lond. 1670.]

<sup>2</sup> Parallelus Torti et Tortoris ejus L. Cicestrensis, [auctore L. P. Andrea Eu-demon-Joanne Cidonio, Colon. 1611], c. v. p. 241.

<sup>3</sup> [Vid. cap. iii. § 14.]

<sup>4</sup> Fidelis Servi Subditio infideli Responsio ; Lond. 1673. [The author is said to have been Thomas Wilson, afterwards Dean of Durham.]

<sup>5</sup> p. 121. [The pages in this pamphlet are not regularly numbered.]

gather the beginnings of queen Elizabeth, that there might be 177 an exact history of her, *tandem aliquando, qui omnia acta diligenter observavit, qui summis reipublicæ negotiis consulto interfuit*—<sup>6</sup> relates it thus :

5. That a nobleman of this country being about the beginning of the queen's reign at Rome, Pius IV. asked him of her majesty's casting his authority out of England; who made answer that she did it being persuaded by testimonies of scripture, and the laws of the realm, *nullam illius esse in terra aliena jurisdictionem*. Which the pope seemed not to believe, her majesty being wise and learned, but did rather think the sentence of that court against her mother's marriage to be the true cause; which he did promise not only to retract, *sed in ejus gratiam quæcunque possum præterea facturum, dum illa ad nostram ecclesiam se recipiat, et debitum mihi primatus titulnm reddat*: and then adds, *extant [adhuc] apud nos articuli abbatis* <sup>7</sup> *Sanctæ Salutis manu conscripti, extant cardinalis Moronæ literæ, quibus nobilem illum vehementer hortabatur, ut eam rem nervis omnibus apud reginam nostram sollicitaret. Extant hodie nobilium nostrorum aliquot, quibus papa multa aureorum millia pollicitus est, ut istius amicitiae atque fæderis inter Romanam cathedram et Elizabetham serenissimam authores essent.* This I have cited the more at large, for that Camden seems to think what the abbot of St Saviour propounded was not in writing; and because it being printed seven years before the cardinal Morona's death, by whose privity—as protector of the English—this nogotiation passed, without any contradiction from Rome, there can no doubt be made of the truth of it. And assuredly some who have conveniency and leisure may find more of it than hath been yet divulged: for I no way believe [the pious and learned prelate], the bishop of Winchester, would have been induced to write, it did *constare* of Paulus IV.; nor the queen herself, and divers others of those times, persons of honour and worth—with some of which I

<sup>6</sup> Ibid. pp. 70, 71.

<sup>7</sup> 'Sancti Salvatoris.' Camden, ad an. 1560, [p. 48.] In the year 1562, he seems to have been employed by the said pope into France. [Mandò l'abate di S. Saluto per questo in Francia.] Histor. del Concil. Trident. [di Soave],

Lib. vi. p. 528. [The History of the Council of Trent by Cardinal Pallavicino, Lib. xiii. c. 57, § 1, styles him, 'abbate di San Saluto.' ] The cardinal here referred to is called Moronus in the Life of Cardinal Pole, [Venet. 1563, fol. 31, b.]

178 myself have spoken—have affirmed it for an undoubted truth, did not somewhat more remain—or at least had formerly been —than a single letter of Pius IV., which apparently had reference to matters then of greater privacy. And here I hold it not unworthy a place, that I myself talking some time with an Italian gentleman, versed in public affairs, of this offer from the pope, he made much scruple of believing it; but being in a place where books were at hand, I shewed him on what ground I spake, and asked him if he thought men could be devils, to write such an odious lie, had it not been so. ‘ Well,’ says he, ‘ if this were heard in Rome amongst religious men, it would never gain credit; but with such as have in their hands the *maneggi della corte* (for that was his expression), it might be held true.’

6. Indeed, the former author doth not express—as perhaps then not so fit to be published—the particulars those articles did contain, were writ with the abbot’s own hand—which later pens have divulged—but that, in general, it should be any thing lay in the pope’s power, on her acknowledging his primacy; and certain no other could by him have been propounded to her, nor by her with honour accepted, than that of his allowing the English liturgy: so that they who agree he did by his agent (according to his letter) make propositions unto her, must instance in some particulars, not dishonourable to herself and kingdom to accept, or allow what these writers affirm to have been them. And I have seen and heard weighty considerations, why her majesty could not admit her own reformation from Rome; some with reference to this church at home, as that it had been a tacit acknowledgment it could not have reformed itself, which had been contrary to all former precedents; others to the state of christendom as it then stood in Scotland, Germany, and France—but with this I have not took upon me to meddle here.

179 7. Yet what the queen did upon this message, seems to have given no very ill satisfaction; for <sup>1</sup>sir Edward Carne, then in Rome, advised the pope the same year to invite her to the council of Trent, promising him half the kingdom with her own liking would receive his messenger; which yet was found otherwise. The reasons why, are some touched by historians, and may more at large be seen in sir Nicholas Throgmorton’s negoti-

<sup>1</sup> Historia del Concilio Tridentino, [di Soave] Lib. v. p. 446.

tiations, then her ambassador in France. Certainly <sup>2</sup>the French were not altogether out of an opinion—or at least would have it thought so—of her sending to the synod; which the pope, however he invited her, was not a little troubled at. But the great combination of the popish party, supported by France against England, made her see she could expect no good where they were predominant: upon which she caused the divines of her kingdom in council to consider of a just and lawful reformation; who meeting, 1562, reviving the acts of a synod held at London ten years before under Edward VI., and explaining some few expressions, and omitting some points rather of dispute than faith, did conclude on thirty-nine articles so just, so moderate, so fully agreeing with the doctrine of the primitive fathers, and with the ancient tenets and practice of this very church, in the times of the Britons and Saxons, as if any shall say no clergy in any age or place have held out a more exact rule, he may be easilier contradicted than justly blamed or confuted.

8. For having laid their ground, that <sup>3</sup>“holy scripture containeth all things necessary to salvation, so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man, that it should be believed as an article of the faith,”—they do upon that basis establish the doctrine of the three creeds, the Nicene, Athanasian, and Apostles’, heretofore ever held to contain *ecclesiarum omnium fidem*; and that the <sup>4</sup>“Romish doctrine of purgatory, pardons, worshipping and adoration as well of images as of reliques, invocation of saints,” &c., is not warranted by scripture, that is, are no articles of faith: and then proceed to settle such other things as are *juris positivi*, with so just a moderation, as is hardly elsewhere to be found; changing nothing for the general, but where the practice of their own ancestors did justify their doings, without at all extending themselves to any thing where they had not antiquity their warrant.

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9. Following which, they restored the cup, having the council of Clermont under Urban II., that <sup>5</sup>*corpus dominicum*

<sup>2</sup> Ibid. Lib. vi. pp. 522, 528.

<sup>3</sup> Art. vi. of the Synod of London, 1562. [Thereupon making a just distinction, which were the canonical, which the apocryphal books; as they had been taught by St Gregory, and constantly

maintained in this church. Vid. Gregor. Moral. Lib. xix. c. 13, 17: Johan. Saresber. Ep. clxxii.]

<sup>4</sup> Art. xxii.

<sup>5</sup> Apud Orderic. Vital. Eccl. Hist. Lib. ix. A.D. 1095, p. 720, A.

*et sanguis singulatim accipiantur*, the command of <sup>1</sup>Paschalis II., and the practice of the English church, where sickly people, women as well as men, were to be provided of a pipe to receive it by; as was <sup>2</sup>expressly enjoined the order of the Gilbertines about 1200. The thing being already printed, I need here repeat no more, but only add, that this permission of theirs was no other but a restoring to *minores ecclesias*, that is, parochial or country churches, that liberty Peckham had deprived them of, not three hundred years before. For I do not find any prohibition, but the lay might ever have been partakers of it with us *in majoribus*, that is, cathedral churches; for <sup>3</sup>Lyndewode in his gloss upon the English constitutions, about 1430, propounds this question, *Sed numquid in istis ecclesiis cathedralibus, et aliis majoribus, liceat non celebrantibus, dum communicant, recipere sanguinem Christi in specie vini?* *Videtur ex hac litera, quod sic; argumento sumpto a contrario sensu, quod est in jure fortissimum... et hoc bene putarem verum, saltem quoad ministrantes sacerdoti celebranti, &c.* [And Johannes de Burgo, sometimes chancellor of Cambridge, in his 'Pupilla Oculi,' which he writ 1385, speaking what is to be done if any thing after consecration fall into the chalice, in the end propounds this <sup>4</sup>question—if the priest *venenum ibi esse deprehenderit immissum*, and resolves it, *nullo modo debet sumere, nec alteri dare, ne calix vitae vertatur in mortem, &c.*—which plainly shews some others besides the consecrating priest might have the cup then given them.]

10. For the permitting of matrimony to the clergy, it is undoubted all here had the liberty of marrying, before <sup>5</sup>Landfranc in a council at Worcester, 1076, did rather advise than

<sup>1</sup> Apud Baron. Annal. Tom. XII. ad an. 1118, in Appendix, [p. 1194, ed. Moguntiae.]

<sup>2</sup> Regulæ Ordinis Sempringensis sive Gilbertinorum Canonicorum, de Canoniciis, c. 33, [in Holstein's 'Codex Regularum Monasticarum et Canonicarum,' Tom. II. p. 497. They may be seen also in the second volume of the Monasticon Anglicanum]: Vid. 'Adversaria,' Doct. Watsii ad Mat. Paris, p. 9, l. 6.

<sup>3</sup> Provinciale, Lib. 1. de Summa

Trinitate, cap. 'Altissimus,' [p. 9], not. l. verb. 'minoribus Ecclesiis'.

<sup>4</sup> [De Casibus periculosis in Missa, c. 6.] [fol. 17, b, col. 1; Lond. 1510.]

<sup>5</sup> Antiquitat. Britan. p. 113, l. 12. [ed. Hanov. This council was, however, held at *Winchester*: cf. Spelman, Tom. II. p. 13. Similar restrictions were placed on clerical marriages two years earlier in a council also held at *Winchester*. Vid. Antiquit. Britan. p. 111, l. 32.]

command the contrary ; which Huntindon (who was himself the <sup>6</sup>son of one in holy orders) says was first prohibited by Anselm, 1102. But <sup>7</sup>*multi presbyterorum statuta concilii Londoniensis . . . postponentes, suas fæminas retinebant, aut certe duxerant quas prius non habebant, &c.* : so that his constitutions came quickly neglected, priests both marrying, and retaining their wives. At which though the king were <sup>8</sup>somewhat displeased, yet soon after <sup>9</sup>he took a piece of money of them for it, and they kept them by his leave. Divers constitutions were after made by several archbishops and legates in the point, as by Stephen Langton at Oxford, 1222, registered by <sup>10</sup>Lyndewode : <sup>11</sup>yet it is manifest they did secretly contract marriage, which some are of opinion they continued till towards the end of Edward the third's reign. This I am the rather induced to believe out of that in <sup>12</sup>Knyghton, that <sup>13</sup>John de Alithwerl, clerk, was slain by his wife and servant in his own house at Leicester, 1344, for which fact she was burnt, and he hanged. Now I conceive, had she been only his concubine, not his servant, she had not suffered by the judgment of burning for the murder, but hanging only : neither can I interpret the word *clericus* for other than one in holy orders, prohibited marriage by the canons of Rome ; though I know, *large loquendo*, as our <sup>14</sup>Lyndewode hath it, *omnes in ecclesia ad divinum officium ordinati* are sometimes so styled ; <sup>15</sup>of which such as were *infra subdiaconatum* might retain their wives, but those were *in subdiaconatu* or above were to quit them. But the canons yet remaining, made at sundry times from Lanfranc even to Chichele, by the space of more than three hundred years, enough assure us this point of celibate was not easily imposed on the

<sup>6</sup> Henr. Huntindon. [Hist. Lib. viii.]

p. 390, l. 1 : p. 378, l. 53.

<sup>7</sup> Eadmer. p. 94, l. 48, etc.

<sup>8</sup> Ibid. p. 105, l. 27.

<sup>9</sup> Hen. Huntindon. p. 384, l. 33.  
Vid. Saxon. Chron. MS. [in Biblioth. Cotton. Claudius, A. v. 1 : or the printed Saxon Chronicle, p. 234, ed. Oxon. 1692.]

<sup>10</sup> Vid. Provinciale, Lib. iii. de Co-habitatione Cleric. etc., et de Clericis conjugatis.

<sup>11</sup> Constitutio D. Othonis, cap. 'In-

notuit', [p. 38, ad calc. Lyndewode.]

<sup>12</sup> De Eventibus Anglie, col. 2584, l. 6, etc. "Clericus apud Leicestriam."

<sup>13</sup> Quære, whether this were not the priest of the town that was thus inhabiting there.

<sup>14</sup> Provinciale, Lib. iii. de Locato et Conducto, verb. 'Si quis Clericus,' [p. 163, not. y.]

<sup>15</sup> Ibid. de Clericis conjugatis, [p. 128, not. b.] Vid. Monasticon Anglicanum, [Vol. I.] p. 899, col. 2 : p. 900, col. 1.

English clergy, and that such as laid it might take it off again.

11. For images, if the Saxons had any use at all of them in their churches—for ornament, for history,<sup>1</sup> to which end St Gregory holds they might be permitted, for memorials of holy 182 men departed (as we have of late seen), and they being only thus applied, I conceive<sup>2</sup> with the bishop of Salisbury, the weight of the question not so great—yet it was a thing voluntary, no command of the church's enjoining it, till after the conquest. And here the question is not, whether Augustine might or did bring the picture of our Saviour's cross in his banner, as most protestants yet retain it; but whether he placed them in the church, with an intent to have worship of any kind attributed unto them: for which purpose, I confess, I have not heard of them till many years after; for the vision of Egwinus, and the council of London setting up of images being made good (so far as I know) by no author of any antiquity, I cannot but take it,<sup>3</sup> with Baronius, for a mere figment.

12. It is certain,<sup>4</sup> 792, the bishops of England declared their dissent from the second council of Nice, in point of images, held only four years before, according to<sup>5</sup> Diceto: and where some interpret that they did only condemn the worship the Greeks call *λατρεία*, by using the Latin word *adorare*; it cannot be denied but they did reject that<sup>6</sup> *τρυπητικὴν προσκύνησιν* the oriental bishops had established, in which sense they used the word *adorare*—which is often, as well in holy writ as by human authors, taken for that reverence is given a creature, as for the religious duty we only owe to the divine majesty; see Gen. xxiii. 7, 12; Ingulphus, a writer not long after,<sup>7</sup> *Constantinopolim perenimus, ubi Alexim imperatorem adorantes, &c.* So Arundel in his constitutions,<sup>8</sup> *adorationem crucis gloriose.*

<sup>1</sup> S. Gregor. Epist. Lib. viii. c. 109; Lib. ix. c. 9.

<sup>2</sup> Jewel's Reply unto M. Harding's Answer, Art. xiv. [p. 386, Works, Lond. 1611.]

<sup>3</sup> Baron. Annal. Tom. VIII. ad an. 714. ii.

<sup>4</sup> Simeon. Dunelm. col. 111, l. 51, etc.: R. de Hoveden, p. 485, l. 3: M. Westmonast. [Flores Hist.] A. D. 792.

p. 146, l. 19.

<sup>5</sup> A. D. 783. At apud Baron. A. D. 787. Tom. IX. §§ x. xxxviii.

<sup>6</sup> Concil. Nicen. II. Act. vii. [in Concil. ed. Labb. Tom. VII. 556, D.]

<sup>7</sup> Ingulph. Histor. p. 904, l. 9.

<sup>8</sup> Lyndewode. Provinciale, Lib. v. de Hæreticis, cap. 'Nullus quoque' [p. 288.]

13. To this narrative <sup>9</sup> Harpsfield gives the title of *communitia et insulsa fabula*, and thinks it not writ by Simeon Dunelmensis or Matthew Westminster—he might have added Hoveden, the MS. <sup>10</sup> history of Rochester—but that it was anciently inserted into them. For answer to which, he would be desired to produce any one old copy without it, not mangled, so as it doth *prodere furtum* by wanting it: I have seen divers 183 of Hoveden MSS., some of Matthew of Westminster, but never did one wherein it was not found—not in the margin but in the text itself, and so it is in Dunelmensis his MS., at Benet college, in Cambridge. For my part, I do not know how any thing we mislike in history, may not after this manner be rejected, if a relation gathered from monuments of an elder date, which are perished, yet cited by one who lived not so long after the time he speaks of, but they might well come to his hands, whom we find very sincere in such citations as yet remain out of more old authors than himself, ever esteemed of good credit in the church of God, and in his narration followed, *ad verbum*, by those who writing of the same matter succeeded him—I confess, I say, if this may be cast away, as a lying and foolish fable, I know not what shall gain credit. But what will men not lay hold on in a desperate shipwreck? I remember <sup>11</sup> Baronius, pressed with the testimony of Luitprandus in the deposition of John XII. by imperial authority, makes no question of denying the five last chapters of his sixth book to have been written by him, though [before that] never doubted for more than six hundred years since he lived.

14. Another <sup>12</sup> doctor, I confess, seems to give a more difficult objection; that <sup>13</sup> Alcuinus, who is said to have writ against the second Nicene council in the point of images, doth in his dook *De Divinis Officiis*, say, *Prosternimur corpore ante crucem, mente ante Dominum; veneramur crucem, per quam redempti sumus, &c.*—and this, from an author had written

<sup>9</sup> [Hist. Anglican. Eccl.] Sæc. viii. c. 5, p. 126, l. 19.

<sup>10</sup> In Biblioth. Cotton. [Vitel. E. xiv. 242.]

<sup>11</sup> Annal. Tom. X. ad an. 963, ii. iii. : ad an. 968, x.

<sup>12</sup> Richard. Smith, Flores Histor. Eccl. Lib. II. c. 7, p. 134.

<sup>13</sup> De Divinis Officiis, c. 18, [Vol. III. p. 479; Opp. ed. Ratisbon. 1777.] [This book he never writ, according to the opinion of learned men, but some Frenchman of a later time. Dallæus, de Jejuniis et Quadragesima, Lib. III. c. 12, pp. 536, 537 : c. 13, p. 567. Vid. Divin. Offic. cap. 'de Singulis vestibus.']

against images, he would have imply a veneration of them, even in his time who opposed them, by the English church. But I do not take the reverence of the cross to infer the use or worship of images. It is not to be denied but Christians, in their talk and writings, did extol and magnify the cross, forced thereunto by the gentiles, who spake ignominiously of him that died upon it; yet I believe it will be difficult to shew any law

184 or canon before the conquest, enjoining [here] the use, much less that attributed any religious worship unto images. [And here I cannot omit the dexterity of the Roman party, who when the catholic shews antiquity made no use of the images of saints in churches, will prove the contrary, for that some Christians had crosses or pictures of our Saviour—as if they could not have retained these with honour, but they must have had images of saints to worship; which seems to me very differing: the one shewing, in opposition to the heathen, they were not ashamed of him who died on the cross for them: the other brought in, worshipped, and still continued by the church of Rome, to the scandal of catholics, not in opposition to the gentiles. And therefore, though we do find the one anciently among us, we do not find the other placed in the church.]

15. It is true, the <sup>1</sup>council of Celicuith, 816, did charge *unicuique episcopo, ut habeat depictam in pariete oratorii, aut in tabula, vel etiam in altariis, quibus sanctis sint utraque dedicata, &c.*, which was clearly for memorial and ornament; as it hath been very common, in some churches, to have on the wall the image of queen Elizabeth, and such as have built an aisle or window, to have their statue or picture set up in it, which in some parts perhaps remain to this present; yet no man ever held any religious duty fit to be given them, nor any man compelled to set them up. [That there was neither precept commanding any religious use of them, nor practice with us of frequent placing images in churches, for above a thousand years after Christ, I cannot at all doubt. Among the ornaments <sup>2</sup>ad cultum ac ministerium ecclesiae necessaria, sent hither by Gregory to Augustine, we meet not one; nor when <sup>3</sup>Acca dressed up the church at Hexham doth he mention any. When the Danes, 870, made that horrid devastation in Lincolnshire

<sup>1</sup> Spelman. Concil. p. 328, c. 2.

<sup>2</sup> [Bed. Lib. i. c. 29.]

<sup>3</sup> [Ibid. Lib. v. c. 20.]

and parts adjacent, burning religious houses, destroying the persons found in them, the monks in Croyland flying for safety of their lives, Ingulphus <sup>4</sup> makes an exact inventory of all pertaining to their church, they carried with them or left behind; but nothing of any image. Egelricus, abbot of that house, about 984, <sup>5</sup> bestows sundry necessaries on the church there; but amongst them no image is found. Eadmerus, <sup>6</sup> describing the old church of Canterbury, remembers nothing of any in it. Dunelmensis, <sup>7</sup> recording the gifts of Æthelstan to St Cuthbert, hath no image amongst them either of our Saviour or of any saints. As for that of our Saviour on the cross speaking, 975, in the refectory at Winchester—though that were not in a church—it being remembered neither by Florentius Wigornensis, nor Simeon Dunelmensis, and related soifferingly, I confess I cannot hold it a story to <sup>8</sup>build anything upon, but as made in after times when their use was more common. . . .

[As these omissions prove them not to have been in those times placed in Christ's house, so the remembering them after, when their use began, assures us it was not chance they were left out. The first I have observed were the images of our Saviour, the blessed virgin, and St John the evangelist, given about the conquest by <sup>9</sup>Tosti (or rather his wife), a Fleming, to the church of Duresme. And not long after, <sup>10</sup>Lanfranc, re-edifying the church of Canterbury, placed the same images in it too; as perhaps was the case in Italy, whence the archbishop came. Yet I would not be here understood, as if I affirmed ornamental sculpture, or memorials of men departed, were altogether excluded out of those sacred structures. It is recorded the church of Hexham to have had <sup>11</sup>*capitella columpnarum . . . et arcum sanctuarii historiis et imaginibus et variis celatura- rum figuris ex lapide prominentibus, et picturarum et colorum grata varietate mirabilique decole decoravit.* And <sup>12</sup>Godricus, abbot of Croyland, having buried eighty-four monks of Peterborough, destroyed by the Danes, in the church-yard there,

<sup>4</sup> [Ingulph. Hist. p. 866, l. 13, etc.]

<sup>5</sup> [Ibid. p. 889, l. 12, etc.]

<sup>6</sup> [Apud Gervas. Dorobern. de Com- bustione et Reparatione Dorobern. Ecol. col. 1292.]

<sup>7</sup> [Apud Scriptores x. col. 75, l. 11.]

<sup>8</sup> [Spelman. Concil. Tom. II. p. 492.]

<sup>9</sup> [De Ecclesia Dunelm. apud Script. x. col. 36, l. 16.]

<sup>10</sup> [Gervas. Dorobern. col. 1293, l. 16, etc.]

<sup>11</sup> [De Episcopis Hagust. apud Script. x. col. 290, l. 28.]

<sup>12</sup> [Vid. Ingulph. p. 868.]

with their abbot, erected over him a pyramid, having *insculptas imagines abbatis ac monachorum suorum circumstantium*, as a monument of them ; and a little off, in the same yard too, *crucem lapideam similiter imagine Salvatoris insculptam*, that such as passed by might remember the monastery destroyed, and according to the devotion of those times, pray for them whose bodies rested there—but hitherto no religious use, nor any injunction of the church commanding them.]

Not long after placing these images of saints (though but for ornament) in churches, the ill by some was found more than the benefit ; which caused the founder of the order of Sempringham at the very first, about 1148, establish : <sup>1</sup> *Sculpturæ vel pictureæ superflue in ecclesiis nostris seu in officinis aliquibus monasterii, ne fiant, interdicimus ; quia, dum talibus intenditur, utilitas bonæ meditationis vel disciplina religiosæ gravitatis sœpe negligitur : cruces tamen pictas, quæ sunt lignæ, habemus.* So that it is plain they did account all pictures so superfluous as not to have them, but only painted crosses ; and this was one of the first foundation. And in another <sup>2</sup> place, which I take to be somewhat after, the buying of them and silk, as things indifferent, are alike interdicted ; yet a direction how to bestow any thing of that nature should be left them : but see the words ; *Nihil de serico ematur a nostris, vel de nostro ad nostrorum opus, vel ad aliquid religioni contrarium, et seculi vanitatibus amminiculum ; nec etiam ad quodlibet sacerdotale indumentum, nisi constet esse necessarium. Si vero datur, secundum arbitrium prioris omnium communi utilitati et usui mancipetur. Hoc idem de yconiis vel aliis sculptilibus dicimus, quæ ad beatæ Mariæ virginis vel aliorum sanctorum sunt fabricata memoriam : quæ tamen gratis <sup>3</sup> grata, prout de serico praediximus, ad sororum altare vel hospitium, vel alio apto loco honeste ponenda decernimus.* So that it is apparent hitherto their use was esteemed no other than that of silk ; and these two articles seem to have

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<sup>1</sup> “Regule beati Gilberti et successorum ejus, per capitula generalia institutæ, et de exordio et ordinatione, et institutione Ordinis Canonicorum, Sanctimonialium, Fratrum et Sororum Laicarum Ordinis de Sempringham, de Canonicis, c. xv. § ‘Sculpture,’ [in Holstein, Tom.

II. p. 490.] [Vid. Monasticon Anglican. Tom. II. p. 725.]

<sup>2</sup> De Fratribus, c. xiii. [in Holstein, Tom. II. p. 607.]

<sup>3</sup> Sic MSS. sed lege ‘gratis data,’ as it is in other places (as you will see hereafter) repeated.

been resolved on nigh the first foundation—being in an hand differing from some other I shall mention—by the founder himself.

16. In the year 1200, the house of Sixle or Sixhill in Lincolnshire, was visited by the abbot of <sup>4</sup>Waredune, as commissioner of <sup>5</sup>Otho, the pope's legate; where about twenty articles were concluded for the government of the order: the fifth of which, though it gave some more liberty than the former, yet was not without restraint: but take it from an <sup>6</sup>hand of those times: *Anno gratiæ mccc., in visitatione facta de Sixl, per abbatem de Wardun auctoritate domini Otonis legati, statuta sunt hæc firmiter observanda. Imprimis, &c. cap. 5: Item inhibetur ne picturarum varietas aut superfluitas sculpturarum de cætero fieri permittatur, nec liceat alicubi yconias haberis, nec imagines, præter ymaginem Salvatoris, et <sup>7</sup>y. beatæ Mariæ, et Sancti Johannis evangelistæ.* Hitherto, questionless, the church of England, following the doctrine of <sup>8</sup>St Gregory, had been taught by testimonies of holy writ, that *omne manufactum adorare non liceat*; and though they might be lawfully made, yet by all means to avoid the worshipping of them—but see the progress.

17. Sixty-eight years after this, Othobon, being the pope's legate in England, did in his own person visit the chief house of this order, and committed the others to Rodolphus de Huntedune, the said cardinal's chaplain, and penitentiary; who associating to himself one Richard, <sup>9</sup>general inquisitor of the order of Semplingham, did, in the year 1268, conclude upon seventy-four or seventy-five heads or chapters for the government of them; the fifty-fourth of which, under the title *de ymaginibus habendis*, is this:

*Item, cum secundum Johannem Damascenum ymaginis honor ad prototypum, id est, ad eum cuius est ymago pertineat, ad instantiam monialium et earum devotionem fervent-* 186

<sup>4</sup> Wardon or Wardun was a monastery of the Cistercian Order in Bedfordshire. [Vid. *Monasticon Anglicanum*, Vol. I. p. 784, col. 2.]

<sup>5</sup> Quære, whether this were that Otho [who] was after Cardinal; viz. in September, 1227.

<sup>6</sup> [An account of Sixill is given in the

*Monast. Anglican.* Vol. II. pp. 810, 811; but there seems no mention of this visitation.]

<sup>7</sup> [yconium.]

<sup>8</sup> *Epist. Lib. ix. c. 9, Indict. iv.*

<sup>9</sup> “Generali ejusdem Ordinis de Semplingham Scrutatore.”

*tius excitandam, conceduntur eis ymagine crucifixi et beatæ Mariæ et Sancti Johannis evangelistæ, et quod possint habere in quolibet altari dedicato ymagine ipsius sancti in cuius honore altare dedicatum est. Si tamen gratis detur eidem, sicut beatus <sup>1</sup> G. de serico et de ymaginebus duxit statuendum, et celebretur ipso die festivitatis illius sancti, et die dedicationis ejusdem altaris, missa ad dicta altaria, etiam si sint infra clausuram monialium.* Thus they.

18. By which it is manifest, this kingdom had not then <sup>2</sup> received the seventh council; for if they had, there can be no thought they would have built their article upon Damascene's opinion only. But by all these we may see, images were brought into this church by degrees, by little and little: first they had none, then only [for ornament] wooden crosses were tolerated; then they might not buy any, but being given they might accept the image of our lady and other saints; then an inhibition of all saints except our Saviour, the blessed virgin, and St John the evangelist; to which was added the image of that saint their altars were dedicated unto, and these only by concession, not bought, but given. So that it is plain, they were taken for things only indifferent, as silk, which they might use or be without, no processions, bowings, kissings, &c., of them prescribed; but how the practice was afterward, that chapter of Arundel registered by Lyndewode may tell you, which because it is long, I shall not farther repeat, it being printed, than to add that it is in him, Lib. v. de *Hæreticis*, cap. 'Nullus quoque:' and in another place he propounds this question, <sup>3</sup> *Numquid ymago Christi sit adoranda cultu latræ?* and resolves, *si consideretur ut ymago, tunc quia idem motus est in ymagine in quantum est ymago et ymagineatum, unus honor debetur ymagini et ymagineato; et ideo cum Christus latræ adoretur, ejus ymago debet similiter latræ adorari. Nec obstat Exod. xxvi. ubi dicitur, non facies tibi ymagineum nec sculptam similitudinem; quia illud pro eo tempore erat prohibitum, quo Deus humanam naturam non assumpserat.*

[The cross I confess more ancient. William Thorn remembers <sup>4</sup> *crux bifurcata*, or *geminata sive duplicata* (as others

<sup>1</sup> Gilbertus.

<sup>2</sup> Concil. Nicænum II.

<sup>3</sup> Lib. III. de Ecclesiis edificandis,

cap. 'Ut parochiani:' verb. 'imagines,'

[p. 252, not. s.]

<sup>4</sup> [Chronica, col. 1763, l. 42.]

call it), to have been sent by St Gregory and by Augustine left to that house. But the cross being neither enumerated by <sup>5</sup> Bede, nor in the <sup>6</sup> deed of king Ethelbert expressing what came from Rome, and, as the book in <sup>7</sup> Trinity Hall intimates, grounded on no other proof than report and the relation of <sup>8</sup> Spot, that writ well nigh seven hundred years after—I shall urge no farther; every one will credit what he fancies. I cannot deny it seems to me of doubtful faith, and the rather because I have not yet observed any certain testimony in our writers of their placing in churches, till some time after]. . . .

[It is not to be doubted but in the inundation of the barbarous pagans, Christians placed crosses over the sepultures of those by them destroyed; as a token such as lay there died in the faith of Christ crucified—as I have shewn of <sup>9</sup> Ingulphus. <sup>10</sup> Æthelstan, A.D. 934, coming by Duresme in his expedition against the Scots, bestowed sundry ornaments on that church; among which there is no image, but <sup>10</sup> *unam crucem auro et ebore artificiose paratam*: and about 1020, <sup>11</sup> Canutus gave *nomina-tissimam crucem* to the monks of Hyde by Winchester. More examples of the like donations may be met with in the writers of those times (and truly I think not much before): but hitherto they were for no other end than to adorn the churches. No speaking or praying to it, as unto Christ; no questioning whether the honour rendered were <sup>12</sup> *latria* or *hyperdulia*; no office in especial addressed to it; no <sup>13</sup> speculations why *festum crucis* was celebrated, and not *festum asinæ*, *cui insidens Christus venerabatur a populo*.]

19. The synod at Westminster, finding things in this posture, and the retention of images to have been in many parts joined with a great abuse, if not impiety, took a middle course; first to condemn all manner of adoration or worship of them—and therefore every *sculptile* had been removed out of churches—

<sup>5</sup> [Lib. i. c. 29.]

<sup>6</sup> [Apud. Will. Thorn, col. 1762, l. 55.]

<sup>7</sup> [The Chronicle of St Augustine's, Canterbury, before referred to. This portion of the MS. is printed in Smith's edition of Bede, Appendix, No. vii. p. 692.]

<sup>8</sup> [The more usual name of this writer is Sprott. The cross presented by Augustine is described as 'geminata sive

*duplicata, quæ Thoma Sprott et ab aliis bifurcata notatur.'* *Ubi supra.*]

<sup>9</sup> [Hist. p. 868, l. 10.]

<sup>10</sup> [Simeon. Dunelmensis, c. 75, l. 16.]

<sup>11</sup> [Monasticon Anglicanum, Tom. I. p. 210, col. 2, l. 27: Vid. p. 104, col. 1, l. 22; et passim.]

<sup>12</sup> [Lyndewode, de Eccl. Ædificandis, p. 252, not. s.]

<sup>13</sup> [Ibid. p. 102, not. m.]

but whereas some use might be made of them for remembrance of histories past, to retain in sundry parts such windows and pictures, as might without offence instruct the ignorant in several passages not unworthily preserved: [and for the cross, though they did justly abolish all those vanities, yet in respect Christians had ever carried great reverence unto it as a badge of their profession and our Saviour's sufferings, to retain the use of it in baptism as a token not to be ashamed of confessing his faith, who died on it, to fight under his banner and continue his soldier to our lives' end—of all] which, if any man have since been offended, it must be on other grounds than I understand.

20. As they proceeded with this circumspection, not to depart from the primitive church in matters *juris positivi*, so did they take no less care in points of opinion; for having declared which were the books of holy scripture, they did not absolutely reject the use of the other, though they had been <sup>1</sup>taught by the doctrine <sup>2</sup>of St Hierome and <sup>3</sup>St Gregory, not to repute them *in canone*, but to admit them *quia fidem et religionem aedificant*, or, as they <sup>4</sup>say, for example of life and instruction of manners.

21. [For worshipping saints, as it is evident by the epistle of the church of Smyrna, about the year 165 after our Saviour, upon the death of Polycarpus, the primitive Christians did observe solemn festivals in remembrance of such as had been crowned with martyrdom—as well for conserving their memories as encouraging others to constancy and perseverance, whom God should be pleased in those perilous times that way to call to him; and did profess to love martyrs as disciples and followers of the Lord—so is it very manifest by it they could <sup>5</sup>worship no other but Christ, the Son of God. In like manner

<sup>1</sup> Joan. Saresberiensis, Epist. clxxii. pp. 281—285: Thom. Waldensis, [Doctrinale Antiq. Fidei Eccles. Cathol.] Lib. II. Art. ii. p. 203, col. 2, a: ed. Venet. 1571.

<sup>2</sup> In Proverb. Solom. Praefatio, [Opp. Tom. III. p. 26, b.]

<sup>3</sup> Expositio Moralis, Lib. xix. c. 13.

<sup>4</sup> Art. vi. of the xxxix.

<sup>5</sup> [This place being so punctual, the honour antiquity did give to martyrs was love, but that they did only worship Christ, the Son of God, is obscured by

the Latin inserting ‘*ut Deum*,’ which is not in the original; where we find it *οὐτε ἐτέρον τινα σέβεσθαι*, which is rendered *vel alium quempiam aliquando colamus ‘ut Deum.’* This reading Baronius, too, as suiting rather with his opinion than the truth, retains, Tom. II. ad an. 169, xv.; though to my understanding not anything nearer the words than the scope of that place: which is questionless to shew, what they paid our Saviour to be of another nature than that to other men, and therefore immediately

the Saxons, though they did observe days in remembrance of those who were exemplary for their piety, and by whom they were reduced to christian religion, on the commands of <sup>6</sup>kings and bishops, or by the voluntary devotion of the <sup>7</sup>parochial priest, whose denunciation in that kind they were bound to obey—which made the appellation of ‘saint,’ in elder times, enough common (as <sup>8</sup>cardinal Bellarmine rightly notes, and may be gathered by our ancient historians, who give the name to those of whose canonization there is no shew)—yet they did honour them no otherwise than *eo cultu dilectionis et societatis, quo et in hac vita coluntur homines*, as <sup>9</sup>St Augustine speaks, which what it is he explains, as we shall see.]

[Neither can I think the Saxons did admit such expressions as the church of Rome now approveth. And I believe it would trouble the best seen in the antiquities of those times, to produce any old book of devotions, psalter, primer, or other used by the Saxon in the public service of the church, stuffed with such as are now frequent in them. I have searched diligently, yet not met with one; though I have seen divers, and amongst others three ancient Saxon and Latin psalters, full of prayers, but no one petition to any saint whatsoever. The like does <sup>10</sup>Mr Wheloc affirm of the homilies read in the Saxon church, though they did not deny their interceding for us.]

[The truth is (so far as I can yet discover), from rhetorical expressions found in the fathers, about 1053, some religious men began to compose an office for the blessed virgin, and religious houses to entertain the saying of it with the church’s service—which others <sup>11</sup>opposed, shewing it to be more than prescribed

follows: Τοῦτον μὲν γὰρ νίδν ὄντα τοῦ Θεοῦ προσκυνοῦμεν τὸν δὲ μάρτυρα, *αἱς μαθητὲς καὶ μιμητὲς τοῦ Κυρίου, ἀγαπῶμεν ἀξίας, ἑνεκα ἐνοίας ἀνηκερ-βλήτου τῆς εἰς τὸν Ἰδιον βασιλέα καὶ διδόσκαλον ὃν γένοιτο καὶ ἡμᾶς κοιω-νούς τε καὶ συμμαθητές γενέσθαι—* which I English thus, “For Him, being the Son of God, we worship: but the martyrs, as disciples and imitators of the Lord, we worthily love, for their invincible affection to their own King and Master; of whom grant we may be both partakers and disciples.”] [Vid. Patres Apostol. ed. Coteler. Tom. II. p. 200.]

<sup>6</sup> [Concil. Cloveshoviae sub Cuthberto, A. D. 747, c. 17; apud Spelman. Tom. I. pp. 249, 250.]

<sup>7</sup> [Leg. Edgar. c. 6; apud Jorvalensem, col. 871, l. 55: et Leg. Canut. c. 17; ibid. col. 920, l. 50.]

<sup>8</sup> [Bellarmin. de Scriptor. Eccl. in Sancto Ambros.] [p. 123, ed. Lugduni, 1663.]

<sup>9</sup> [Contra Faustum Manich. Lib. xx. c. 21.] [Opp. Tom. VI. p. 260, d.]

<sup>10</sup> [In Bedam, p. 284: Vid. ibid. p. 314, p. 447.]

<sup>11</sup> [“Nec novæ adinventionis pondus debere superponi, nec nos esse antiquis

by the rule of their order ; that they ought not to be burdened with new inventions ; that they were not more full of sanctity than their fathers, who esteemed those things superstitious and vain, appointed them the bounds of singing and rules of life. In short, the opposer seemed to fight against the queen, and prevailed so far as by his crafty endeavours he drew the brethren not to offer those accustomed praises to the blessed virgin. So that indeed this opinion and practice made no great progress, till, 1095, <sup>1</sup>Urban II., holding a council at Clermont in Auvergne, did authorise the use : after which it grew more common, and very many, having the countenance of the pope and so great a council, seemed to extend their wits how they could most magnify her in epithets, praises, and expressions. So as Anselm, who then lived, esteemed one of the most knowing persons of the age, composed about that time a <sup>2</sup>book ‘Of the excellency of the blessed Virgin,’ styling her in it not only <sup>3</sup>lady of the world,’ ‘queen of heaven, and earth, and of all creatures,’ but shews the <sup>4</sup>saints in heaven, at her coming, did as it were put on their new clothes, because Christ himself would meet her, &c. ; and in another place, asking the question, why our Saviour, going to glory, would leave his mother to the miseries of this life—he gives what he took for the reason, viz. <sup>5</sup>lest perhaps the court of heaven might doubt whom they should go to meet, their Lord or their lady.]

patribus sanctiores, qui videlicet haec superstitionis et supervacua judicantes, psallendi nobis metam, omnemque vivendi regulam praefixerunt. Quid plura? Contra reginam proliari visus est, et confecit. Ad hoc nimurum fratres versuta machinatione pellexit ut solitas beatæ Mariæ laudes ulterius non offerrent.” Pet. Damianus, apud Baronium, Tom. XI. ad an. 1066, v.]

<sup>1</sup> [Baron. Tom. XI. ad an. 1095, l. I.]

<sup>2</sup> [De Excellentia gloriose V. Mariæ, Opp. Tom. III. pp. 214, etc. ed. Colon. 1612.]

<sup>3</sup> [c. vi. ‘domina mundi,’ ‘regina cœli et terræ omnisque creaturæ.’]

<sup>4</sup> [“Certe crediderim omnes illius beatæ patriæ cives, festiviori solito ac sublimiori nitore decoris, ad adventum matris Domini sui preparari, ac nova

quadam et ineffabili jocunditatis gratia pro tantæ rei expectatione conjubilare. Et quid mirum? Ipse Jesus, Deus et Dominus omnium, Filius ejus benedictus, hujus castissimæ virginis et dominæ rerum, ipse ei sicut suæ unicæ matris totus festivus occurrere volebat.” Ibid. c. viii.]

<sup>5</sup> [“Sed, O bone Jesu, istius tuæ dulcissimæ matris Fili, quomodo potuisti pati, ut te in regnum tuæ gloriæ remeante, illam quasi orbatam in miseriis mundi relinquere, et non eam statim tecum regnaturam asumeres? Fortassis, Domine, ne tuæ colesti curiæ veniret in dubium, cui potius occurreret, tibi, vide-licet Domino suo, cum post regnum tuum in assumpta carne petenti, an ipsi dominæ suæ ipsum regnum jam suum materno jure effectum ascendentii.” c. vii.]

[Following the example of so great a doctor, and archbishop of Canterbury,—amongst the English of venerable esteem—the blessed virgin began to be highly honoured, so as mothers in educating their children began to <sup>6</sup>join, with the fear of God, the devout calling on the blessed virgin, and the <sup>7</sup>patronage of saints to be more highly valued than any thing of that age. It is not to be doubted but some disliked this ἐθελοθρησκεία (as the apostle seems to call it, Colos. ii. 23) : it is reported of <sup>8</sup>William II., ‘that he did believe and publicly aver, that no saint could profit any man with God, and therefore that he would not, nor any wise man ought to call upon St Peter, or any other saint for help.’ It is altogether improbable so great a prince, never held an atheist in the world, would without the advice of learned men so absolutely have opposed a catholic tenet, in praying to them more than he did to the Trinity, had the one been taken generally as orthodoxal as the other, or the historian not have censured it for heretical, but only *mentis elatio*, ‘height of mind,’ had the church then concluded it an article of faith.]

[You will ask me then, if the ancient fathers and elder writers made no mention of saints departed. Doubtless they did, by way of apostrophe, call upon heaven and earth to witness and the souls of those departed, yet <sup>9</sup>questioning whether they did hear; and still, directing their petitions to God, did shew from him alone they did expect relief. Which certainly did long continue in this church, nor can I say I have found any thing expressly to the contrary, till after the Norman conquest. In the ‘*Textus Roffensis*,’ collected by Ernulphus, bishop of Rochester, about mcxx. after the laws of king Ethelbert and other Saxon kings, there is set down the trial by water or fire called ‘*Ordalium*;’ and the mass said at it is there *verbatim* <sup>10</sup>recorded, with the title ‘*Incipit exorcismus aquæ ad*

<sup>6</sup> [“A matre sua didicit timorem Dei, et beatam virginem in omni negotio devotius invocare.” Gervas. Dorobern. col. 1668, l. 56.]

<sup>7</sup> [“Illi quippe diebus hic mos Angliæ erat, patrocinia sanctorum, omnibus sæculi rebus, anteferre.” Eadmer. p. 51, l. 25.]

<sup>8</sup> [“... crederet et publica voce assereret, nullum sanctorum cuiquam apud

Deum posse prodesse, et ideo nec se velle, nec aliquem sapientem debere beatum Petrum, seu quemlibet alium, quo se juvaret, interpellare.” Ibid. p. 48, l. 1, etc.]

<sup>9</sup> [Ἐτ τις αἰσθῆται. Gregor. Nazian. Orat. iii. Opp. Tom. I. p. 50, A.]

<sup>10</sup> [Which mass, with all the appurtenances to it, is now printed in the Second Part of Sir Henry Spelman’s ‘Glos-

*judicium*,' etc. After which there is no other mention of the saints found than this : <sup>1</sup> *Immittet angelum Dominus in circuitu timentium eum, et eripiet eos ; gustate et videte quoniam suavis est Dominus. 'Hic offerant.'* *Intercessio sanctorum tuorum misericordiae tue, Domine, munera nostra conciliet ; et quam merita nostra non valent, eorum deprecatio indulgentiam valeat obtinere. Per Dominum.]*

[The like may be seen in <sup>2</sup>Mr Wheloc's 'Notes on Beda'—a book I shall recommend to him is desirous to know the ancient faith of the Saxon church. And whilst they did address their petitions thus only to God, craving nothing for their own or other saints' merits, I do not see but it might be without diminution to Christ, our <sup>3</sup>one God and Mediator. Neither, as that learned author observes, do I see any absurdity in holding the heavenly host do there intercede for us on earth, or to pray to God that he, who hath in a wonderful order constituted angels and men to do him service, would for their intercession assist us. And if any doctor went farther, I conceive it more than the catholic tenet, or practice of this church during the Saxons' government, did lead them to ; and therefore to be looked on as a private opinion in him ; and that this was, in their times, no article of faith, cannot be doubted, in that neither the catholic church in general, nor any member thereof, Greek or Latin, had given rules for knowing, who was to be so reputed : i. e. there was no declaration who was to be taken for such, but every private fancy of the parochial priest, bishop, or city, was enough to cry one up for a saint. Of which, as not impertinent to that I treat, I shall add a word.]

[Cardinal Bellarmine <sup>4</sup>says, the first pope he had read of, did canonize any holy man, was Leo III. St Swibert. The same seems to be the opinion of <sup>5</sup>Angelus Rocca. But I confess I do not yet see how to credit that narration ; for it is said to have been performed by him in Germany, 803, Charles the Great being present. But no author of those times remembers Charles and Leo to have met that year. Baronius, therefore,

sary ;' verb. 'Ordealum.' ] [It may also be seen in Hearne's edition of the 'Textus Roffensis.' ]

<sup>1</sup> [Text. Roffens. p. 23.]

<sup>2</sup> [In Bedam, p. 314, p. 447, p. 450.]

<sup>3</sup> [1 Tim. ii. 5.]

<sup>4</sup> [De Sanctorum Beatitudine, Lib. I. c. 8, § 'Dices,' ] [in Disputat. Tom. II. p. 427, c.]

<sup>5</sup> [Ad calcem Libri de Canonizatione Sanctorum, etc. p. 128, Rom. 1610.]

will have it been 804 ; but that meets with no less difficulties. For all <sup>6</sup>writers agree, Charles did not hear of Leo's intent to visit him till the midst of November, that he came, celebrated Christmas-day with him, staid only eight days and returned to Rome—circumstances, cannot agree with a canonization on the fourth of September. Baronius, therefore, that saw these incongruities and wisely bids his reader consider, will refer it to his first coming into Germany, which was 799. The first canonization I have met with, by the pope, in an approved author (not frivolous legends), is of <sup>7</sup>Gerardus, bishop of Toul in Lorrain, canonized, 1052, by Leo IX.]

[The first English bishops, intromitted themselves in this canonizing saints, were Lanfranc and Anselm, on this occasion. After 1066, England and Normandy being both under one governor, the inhabitants, according to the abode of the prince, or otherwise on private occasions, were forced to have frequent recourse each to other. About 1080, <sup>8</sup>Anselm came unto England to visit his old master Lanfranc, and for other ecclesiastical matters, when amongst other things, Lanfranc told him the English did institute to themselves certain saints, and amongst other one Elphegus, an archbishop, whom the Danes destroyed, because he would not free himself by exposing his dependents to spoil. To whom Anselm by probable reason shewed, Elphegus dying for justice was a true martyr : upon which Lanfranc did appoint his memory to be solemnly celebrated, but for Bregwinus, the twelfth, Adelardus, the fourteenth,  $\text{\textit{A}}\text{\textit{elf}}\text{\textit{fricus}}$ , the twenty-sixth, and other archbishops, there being not found authentic records, the solemnities ended. We may see by this,

<sup>6</sup> [Annales Francorum, a Pithœo, Tom. I. p. 17, Tom. II. pp. 57, 58; ed. Paris. 1588: Reginon. Chronicón, A. D. 804, [inter Scriptor. de Rebus Germanicis, Tom. I. p. 35]: Sigebert. A. D. 804, [ibid. Tom. I. p. 558]: Baron. Tom. IX. ad an. 799, vi.; ad an. 804, viii. "Tu considera."]

<sup>7</sup> [Sigebert. Gemblacensis, ubi supra, A. D. 1062.]

<sup>8</sup> ["Cum venisset in Angliam (Anselmus), ut sibi commissas visitaret ecclesiás et magistrum suum jam archiepiscopum videret Lanfrancum, inter alia dilectionis eloqua dixit Lanfrancus, quod

Angli quosdam sibi instituissent sanctos, inter quos et quendam Elphegum archiepiscopum quidem, quem Dani occiderunt, eo quod pro redemptione sua homines suos nollet spoliare. Cui cum probabili ratione monstrasset Anselmus, Elphegum pro justitia passum verum Dei martyrem esse, instituit Lanfrancus ipsius memorialem solemniter celebrari. De Bregewino vero, Adelardo, Alfrico, et aliis archiepiscopis, quia scripta authentica reperta non sunt, solemnitates esse desierunt." Gervas. Dorobern. de Pontif. Cant. col. 1657, l. 41, etc. Capgrav. etiam in Vit. fol. xvii. a, col. 2.]

how easy it was in those days to make a saint, to remove him out of the number again; for of four archbishops, whose festivals had been kept, three were struck out of the calendar (as we say) at one breath, and one only continued; and this without ever seeking to Rome. Not that in those days they did not go thither, even in slight matters, as to men for advice, not having authority over them. How could it then be hitherto an article of faith, the praying to them?]

[But sundry ills were espied to hang on this manner of esteeming men saints. And certainly it were more avail to the papacy, to have neither tenet nor saint in the church than such canonization as did not depend wholly on the court of Rome. Alexander III., therefore, after 1160<sup>1</sup> established it should not be lawful to honour any as a saint, without the authority of the pope of Rome. Boston of Bury, in his preface before the 'Catalogue' of books found in the several monasteries of England, attributes from Hostiensis this confining the canonization of saints to Rome, to have begun at the council of Tours, 1163; yet I have not found any thing of that nature in the canons of the synod in Neubrigensis; and, if in Hostiensis, in some piece I have not yet met with—for I find it not in his 'Summa.' But because Boston himself is<sup>2</sup> not yet printed, take the effect of what he says, and his own words in the margin: <sup>3</sup>'That though a man believe one a saint and may pray to him privately, yet he is not to make him solemn prayers publicly,

<sup>1</sup> [See Bellarmine, *de Beatiudine*, Lib. i. c. 8; and the epistle of Alexander III., on the canonization of St Bernard, in Labbe, *Concil. Tom. X.* 1376.]

<sup>2</sup> [A portion of his 'Catalogue,' containing the passages here referred to, is printed in Tanner's 'Bibliotheca,' ed. Wilkins.]

<sup>3</sup> [“Similiter quo ad sanctos non canonizatos dicit Hostiensis, in ‘Lectura’ sua super c. ‘Audivimus,’ ‘Extra.’ De religione et veneratione sanctorum quod licitum esset cuiilibet in secreto preces porrigere alicui defuncto, quem sanctum credit, ut pro ipso ad Deum intercedat; non tamen licet pro tali officium solemne facere, vel preces solemnes publice emit-

tere, donec canonizatus fuerit. Et idem dicit Innocentius. Et hoc de novo statutum est in Concilio Turonehs, celebrato per dominum papam Alexandrum III., A.D. MCLXIII. Ante vero solebant metropolitani et diocesani cum populo sanctos, miraculis coruscantes, in publico venerari, et in scriniis honorifice colloccare; libros etiam gentiles et apocryphos ante decretum Gelasii papæ indifferenter legere licuit et habere. Hinc cavendum est cuilibet lectori cum repererit aliquem sanctum nominatum post tempore papæ Alexandri III., ne publice talem ut sanctum veneretur, quounque fuerit ab ecclesia Romana canonizatus.”] [Ubi supra, *Præf. p. xxiii.*]

till he is canonized, according to Hostiensis and Innocentius—an opinion, lately established in a council held at Tours, 1163, by Alexander III.: before which, the metropolitan and diocesan, with the people agreeing of one famous for miracles, did cause him to be honoured for a saint; as they did read and retain, before Gelasius, the books of heathen and other apocryphal writings: that from him men are to take heed not to honour any for a saint, he shall find so named, after the time of Alexander III., till he shall be canonized by the church of Rome.' Which in time became a matter of infinite advantage to the papacy, as well in opinion as profit; by that means giving it a power of blasting the repute of any did not wholly concur with the designs of Rome. Of which the said author gives an apt example in Robert Grosseteste, the excellently learned bishop of Lincoln, a man full of miracles after his death, yet could never be reputed a saint, opposing Innocentius IV. But take the words as they lie in him, being not otherwise printed: *\*Robertus Lincoln. episcopus, qui et Grosseteste dicitur, floruit A.C. MCCLIII. et scripsit multa. Hic fuit doctor in theologia... et in cunctis liberalibus artibus excellenter erat eruditus. Ad papam Innocentium misit epistolam invectivam, satis tonantem, pro eo quod ecclesias Angliae exactionibus indebitis vexare videretur. Hac de causa vocatus est ad curiam; et cum ibi molestaretur appellavit constanter a curia papæ Innocentii ad tribunal Christi: unde contigit, quod eodem Roberto in Anglia obeunte, auditæ est vox in curia papæ, 'Veni, miser, ad judicium,' et papa in crastino inventus est exanimis, quasi cuspide baculi in latere percussus. His de causis, licet perspicuus effulserit Robertus miracula transferri, tamen nec in sanctorum catalogo ponî non est a curia permisus.* If the letter, here spoken of, be that in *<sup>5</sup>Matthew Paris, 1253*, it must be writ before 1250, when the bishop made his last journey to Rome. But I confess I do not take that to be what this author here intends, but another tract or sermon made before the pope, *'De incommodis curiæ Romanæ;* which I have not yet seen, but it is mentioned by Dr James in his *<sup>6</sup>'Ecloga,'* printed at London, 1600. As for the miracles

<sup>4</sup> [Boston Buriensis, Catal. Librorum  
Angl. in 'Roberto,'] [ubi supra, Præfat.  
p. xxxvii.]

<sup>5</sup> [Mat. Paris, Hist. Major, p. 870,

l. 56, etc.]

<sup>6</sup> [Ecloga Oxonio-Cantabrigiensis,  
Part i. p. 143.]

here touched, you may see them in the same <sup>1</sup>author, as well in his greater printed chronicle, as his lesser yet in MS.]

[Raynaldus, a modern writer, in his <sup>2</sup>‘Continuation of Baronius,’ remembers the inquisitors of Ferrara, under Boniface VIII., took out of the grave there and burnt as a heretic, 1301, the bones of one, who had been reputed a saint more than thirty years; in which space there had lived seven popes and several bishops of Ferrara, who at least tolerated the opinion of his sanctity.]

[Of the profit accruing to the court of Rome by such canonizations, what for fees—which the pope had power to increase at his will—and other expenses, I shall say no more, but they are so great, they have kept that innocent prince, king Henry VI., from having a place in the Roman calendar, though solicited by two kings; but there were so great rewards and so many to have them for a sovereign prince, even to the pope’s grooms and smiths, as Henry VII. and Henry VIII. would not venture on it. But of this you may see Morton’s Register, the effect of which is now <sup>3</sup>printed in sir Henry Spelman’s ‘Councils.’]

[The reasons why it is fit the pope, and he only, should be now the canonizer of saints, ‘Angelus Rocca, <sup>4</sup>Antoninus of Florence, and others have writ. I shall enumerate none, but content myself with those collected by Chassanæus: ‘‘That the pope represents God upon earth, and is in his stead;’ ‘that the pope is Christ’s vicar, not only as Christ was a prelate of the church, but as he was Lord of the whole world; and that he can justly dispose of the state and goods of men;’ ‘that the pope hath in all parts the fulness of power, as a king in his

<sup>1</sup> [Mat. Paris, A.D. 1233, p. 877, l. 10, etc.; p. 880, l. 33, etc.]

<sup>2</sup> [Annal. Eccl. Tom. XIV. A.D. 1301, § 23.]

<sup>3</sup> [Tom. II. pp. 720, et seqq. Cf. also Herbert’s Hist. of Henry VIII. p. 252.]

<sup>4</sup> [De Sanctorum Canonizazione.]

<sup>5</sup> [Summa, Part. iii. Tit. xxii. cap. v. § 3.]

<sup>6</sup> [Catalog. Glorie mundi, Part. iii. Consider. xlviij.: “Quod papa representat Deum in terra, et tenet ejus vices.”

“Quod papa est vicarius Christi, non solum in quantum Christus fuit ecclesie

praelatus, sed in quantum fuit totius mundi Dominus; et quod juste de statu et bonis hominum potest ordinare.”

“Quod papa habet plenitudinem potestates in universo, sicut rex in regno.”

“Quod Deus et papa faciunt unum et idem tribunal.” “Quod papa est supremus Dei vicarius, et qui contrarium dicit mentitur.”

“Ex quo cum sit vicarius supremus Dei et sit in locum ejus in hoc mundo subrogatus, tanquam sapient naturam ejus qui canonizat sanctos in ecclasia triumphante, sic canonizabit in ecclasia militante; et ista est communis sententia.”]

kingdom ;' 'that God and the pope make one and the same tribunal ;' 'that the pope is the supreme vicar of God, and he that says the contrary, lies'—from whence he concludes, 'that being the supreme vicar of God, and in this world subrogated as his vicegerent, as knowing his nature, who canonizeth saints in the church triumphant, he shall canonize them in the church militant ; and this is the common opinion.' In which, yet, I do not believe he will have his own countrymen, generally, in all these concur with him.]

[The first Englishman thus canonized by the pope was, as is said, king Edward the Confessor, who being a great benefactor to Westminster, 'Laurentius, the tenth abbot—at least in the series of the abbots of that house, I have seen—employed, about 1162, one Osbert de Clara, prior of it, with some monks, to Alexander III. ; where on the inspection of the book of his miracles and other probable testimonies, the pope gave him letters testimonial of his sanctity, which may be seen in Baronius —though I confess I differ with him in the year and the date somewhat : for it seems to me the letters could not be expedited from Rome till about August, 1163, however their date carries the seventh of February. For, upon the messenger's return, Laurentius, the abbot, desiring to set a period to the business, had recourse presently to Henry II. about the translation of his body ; who appointed the third day after, being Sunday the thirteenth of October, 1163—at which the solemnity passed,

<sup>7</sup> [“Hujus tempore (sc. Laurentii abbatis <sup>x<sup>1</sup></sup>) translatus est sanctus Edwardus, et divina inspirante gratia, regis favore simulque consilio, ad sedem apostolicam Osbertum de Clara, priorem, aliosque de suis fratribus destinavit : ubi tandem, libro miraculorum inspecto adhibitusque probabilibus regis testimonii, procedens dominus papa in publicum de beati regis glorificatione dignam promulgavit sententiam ; decernens eum in sanctorum confessorum catalogum adscriendum, et, ut deinceps observaretur, apostolica scripta mandavit, sub hac forma : ‘Alexander,’ etc. (ut in Baron. Tom. XII. ad an. 1161, i.) dat. Anagnie, 7 Idus Febr. Cupiens autem abbas susceptum negotium ad effectum perducere, cum rege secretum de dicti regis translatione tractatum habuit ; postulans, ut bono principio debitæ consummationis

manum adhiberet. Annuit rex justa poscenti, diemque tertium, juxta quod opportunum videbatur, indixit. Veniente itaque die, quem rex præfixerat, venit rex in ecclesiam cum magno procerum et virorum illustrium comitatu, assistibusque sancto Thoma archiepiscopo Cant. episcopisque quam plurimis, abbatibus quoque et aliis personis venerabilibus ; omnibusque rite peractis, posita est in candelabrum præclara lucerna, sicut illud vas virgineum castitatis in feretro pretioso honorifice collocatum est. Celebrata est autem haec translatio, A. D. MCLXIII., depositionis sue anno LXXVII., tertio idus Octobris, die Dominica, regnante piissimo et glorioso rege Henrico II<sup>o</sup>, anno regni sui nono.” Johannes Flete, Vita Abbat. Westmonast. MS.] [in C.C.C. Camb. No. cclxxxvii. fol. 34, b; fol. 35.]

the king, great store of the nobility and clergy being present. The same <sup>1</sup>author remembers Gervasius, the immediate predecessor of Laurentius in that house, sent the same Osbertus to Rome, in the same errand to Innocentius II.; of whom he could not obtain the favour, which after he easily did. But take the words in him as they lie: *Hic (sc. Gervasius de Blois) propria devotione misit Osbertum de Clara egregie literatum, priorem ejusdem loci, ad curiam Romanam pro canonizatione sancti regis Edwardi; sed ab Innocentio <sup>2</sup>tertio hoc non obtinuit; verum postea idem Osbertus, alio sub pastore missus, papam Alexandrum in illa materia promptissimum invenit.*]

[Yet notwithstanding this so punctual relation of an author, that lived in Henry the sixth's time, and the bull of Alexander III., printed, I dare not bid the reader be confident this apotheosis was now made by any authority from Rome, or other than the English church. For it is no way probable, it being the most signal act of 1163, and the first saint with us so canonized, Gervasius Dorobernensis, Diceto, Neubrigensis, Hoveden (who then lived), Matthew Paris (a monk of that house), would have omitted the circumstance so full of honour to the king. Ailredus, Ethelredus, or Ealredus—who, at the persuasion of Laurentius and by his assistance, wrote the life (now truly printed) of that prince—seems to <sup>3</sup>attribute it to Henry II. and the church (as I take it) of England. And likewise <sup>4</sup>Matthew Paris, A.D. 1163 and 1269—when Henry III. caused his body to be placed in a golden chest or coffin—doth not at all mention the pope to have had any part in the doing of it. Seeing these differences, I confess I did sometimes suppose the bull to have been of Alexander IV.: but that could not agree with Osbert de Clara, whom <sup>5</sup>Boston of Bury (and from him, Balæus and Pitseus) will

<sup>1</sup> [Ibid. fol. 33. See the 'Scriptores Monastici,' pp. 118 et seqq. ed. Anstruther, Bruxel. 1846, where are printed the letters of king Stephen, Henry de Blois, bishop of Winchester, and others, recommending Osbert de Clara to pope Innocent, on the occasion here referred to; and also the letter of Innocent to the abbot of Westminster, on declining to canonize king Edward.]

<sup>2</sup> [Sic MS. legendum: tamen (si vera narratio) 'Innocentio secundo,' qui obiit 24 Sept. 1143. Innocentius III. non erat papa ante an. 1198.]

<sup>3</sup> [“... quem tuis temporibus, te regiam auctoritatem p̄ebente, sancta mater ecclesia sublimius extollendum judicavit in terris.” Vit. S. Edwardi, apud Scriptores x. col. 369, l. 65, etc.]

<sup>4</sup> [“Eodem anno translatum est corpus sancti regis et confessoris Edwardi apud Westmonasterium, a beato Thoma Cantuariensi archiepiscopo; p̄e sente rege Henrico, qui h̄ec procuraverat.” Mat. Paris, A.D. 1163, p. 99, l. 33, etc.; p. 1005, l. 39.]

<sup>5</sup> [Vid. Tanner, . Bibliothec. Praefat. xxxvi.]

to have flourished 1136. Nor is it very credible one, who dealt with Innocentius II. and failed in the pursuit, should obtain it, 1163, many years after. <sup>6</sup> Matthew Paris, in his 'Chronicle'—which some call his '*Historia Minor*'—after the prologue, A.D. 1067, shewing the misery the English nobility lay under after the irruption of the Normans, that Edgar Atheling, *de regno Angliae hæres legitimus*, with his mother and two sisters—not daring to abide by it, intending Hungary, his place of birth—were by distress of weather carried into Scotland, where Margaret, one of his sisters, married Malcolm III., and Christina became a nun—adds: *Ex tunc regum Angliae nobilitas a propriis per Normannos expulsa finibus, ad reges Scotorum est infelici sidere devoluta, et aureis sæculis successerunt luteis deteriora. Nec usque ad tempora hæc scribentis (MCCL.) est inventus rex Angliae titulo sanctitatis insignitus.* Yet that very author, in the same volume now printed—recording Henry the third's coming to St Alban's, 1257, directing his pen—<sup>7</sup> recounts not less than eleven kings to have been *canonisati*. Whether the difference between these two places be, that to 1250 the pope, according to the custom then lately introduced, had canonized no English prince, or that from the conquest none had been canonized, the reader may inquire.] . . . .

[Thus the opinion of praying to saints got entrance, but had not the full growth for an article of faith, till after 1335: for divers of the ancients, remembered by <sup>8</sup> Franciscus Pegna and <sup>9</sup> Thomas Stapleton, were of opinion, that souls departed had not the sight of the blessed Trinity before the resurrection—which it is certain pope John XXII. did so much countenance, as he <sup>10</sup> promoted the maintainers of it. On which this article hath such dependence, as Philip de Valois—no doubt agreeing with the opinion of divines—is noted to have said 'laically, but as a

<sup>6</sup> [Hist. Minor, ad an. 1067.]

<sup>7</sup> [Hist. Major, A.D. 1257, p. 945, ll. 9, 12, 15.]

<sup>8</sup> [Director. Inquisit. Part. ii. Com-  
ment. xxi. p. 136, col. 1, e; Rom.  
1585.]

<sup>9</sup> [Thom. Stapleton.] [The passage,  
to which reference is probably made,  
occurs in the 'Antidota Apostolica,' in  
1 Cor. cap. xiii.: Opp. Tom. III. p. 888;  
ed. Paris. 1620.]

<sup>10</sup> [Giovanni Villani, Lib. x. c.  
cxxx. [p. 670, in Fiorenza, 1587]: "Di-  
cendo laicamente, come fedel Christiano,  
che in vano si pregherebbono i santi, ò  
harebbei speranza di salute per li loro  
meriti, se nostra donna santa Maria, e  
santo Giovanni, e santo Piero, e santo  
Paolo, e li altri santi, non potessono  
vedere la Deitate infino al dì del giudi-  
cizio, e havere perfetta beatitudine in vita  
eterna."]

faithful Christian, that in vain there should be prayers to saints, for help by their merits, if our blessed lady, St John, St Peter, St Paul and others could not see the Deity, before the day of judgment.' And notwithstanding the determinations <sup>1</sup> of Benedict XII., this tenet of praying to them was not so constantly received, but <sup>2</sup> Gabriel Biel, who wrote not long after the council of Florence—the first synod determined the point—found in his time as well Christians as heretics deceived, in thinking saints *nobis auxiliari nec meritis possunt nec precibus*; which he labours to confute. But the former resolutions so prevailed as now it must not be questioned among them; yet nothing hitherto <sup>3</sup> concluded by them of the manner how they know the thoughts of men, pray unto them.]

[The sum is, from celebrating the memorials and making honourable mention of godly men departed, some began to speak as if those in heaven interceded for the living upon earth: afterwards, from supposed visions, dreams, and feigned revelations, to fancy any extraordinary help to have been received by their assistance, and so brought directly to crave their patronage; yet entering nothing of that nature into the creeds, catechisms, homilies, psalters, for the set service of the church—so far as I can discover—which clearly shews the opinion not to have been esteemed of that moment, it is since conceived. Afterwards, popes began to canonize men departed, and in time to prohibit the holding any a saint not canonized by them—so making themselves lords and masters both of the tenet and practice—and insert into mass-books, breviaries, catechisms, prayer-books, &c., petitions to saints—yet not at all expressing how they did know what they were petitioned for—in which though there were sundry devout prayers to God, not without mention of them by this church justly retained; yet there were others, so to the diminution of the honour of Christ, our one God and one Mediator, as were justly offensive to pious ears. As to the blessed virgin: <sup>4</sup> *Succurre miseris, juva pusillanimis, refove debiles, ora pro populo, interveni pro clero, intercede pro devoto fæmineo sexu: sentiant omnes tuum levamen, quicunque*

<sup>1</sup> [A.D. 1335 & 1336.] [For this decision of Benedict XII. see Labbe, Tom. XI. Part. ii. 1793.]

<sup>2</sup> [Super Canone Missæ, Lect. xxx. n.] [fol. 66, b; ed. Lugduni, 1642.]

<sup>3</sup> [Bellarmin, de Sanctorum Beatitudine, Lib. i. c. 20, § 'de modo autem,'] [in Disputat. Tom. II. p. 437, A.]

<sup>4</sup> [Breviar. Roman. fol. 312, b; ed. Paris. 1542.]

*celebrant tuam festivitatem, &c.* <sup>5</sup> *Maria, mater gratiae, mater misericordiae, tu nos ab hoste protege, et hora mortis suscipe:* and a little after, *Solve vincla reis, profer lumen cœcis, mala nostra pelle, bona cuncta posce, monstra te esse matrem.* To St Nicholas: *‘Deus, qui beatum Nicholaum, &c. . . . tribue, quæsumus, ut ejus meritis et precibus a gehennæ incendiis liberemur, per Dominum.* To Thomas Becket: <sup>7</sup> *Deus, pro cuius ecclesia, &c. . . . præsta, quæsumus, ut omnes, qui ejus implorant auxilium, petitionis suæ salutarem consequantur effectum, per Dominum*—which last is so gross, as some that had the book I use, formerly interlined with a pen *exemplum tuum*; reading it thus, *qui ejus ‘exemplum tuum’ implorant auxilium, &c.* In which, yet, we find no alteration either in the <sup>8</sup> mass, or <sup>9</sup> breviary, reformed by Pius V. since the council of Trent; and these to one of so ambiguous a life and death, so highly opposing his lawful prince, as if I were of the Roman faith, I could not say I durst venture my soul with his.]

[The church of England, therefore, considering this article to have neither precept for it, practice of it, nor promise annexed to it, in scripture; that there was no appearance of it in the ancient creeds of the catholic church, or where the holy fathers do expressly deliver what they held *de fide*; had its birth from some expressions by way of apostrophe in funeral orations, rhetorical exclamations, or what is else, supposed writings of some fathers; having for the ground or basis, on which the now exercise is built, no other than a late invention of the papacy—in appropriating to itself the canonizing saints, and prohibiting the worship to others not so canonized—and a later determination, that the souls of holy men departed had the fruition of the beatifical vision—following the doctrine of St Augustine and the practice of the primitive church], <sup>10</sup> condemns all religious invocation of them, as those were *non adorandi propter religionem*; yet in respect they were *honorandi propter imitationem*, to retain their commemoration, by appointing a set service for the days on which it celebrated their memorials; thereby to provoke us to imitation of their piety, and to thank God that left such lights, who by their doctrine instructed us,

<sup>5</sup> [Ibid. fol. 329, a, col. 1; b, col. 1.]

<sup>6</sup> [Ibid. vi<sup>o</sup> die Decemb. fol. 329, b, col. 1.]

<sup>7</sup> [In fest. S. Thomæ.]

<sup>8</sup> [Apud Juntas, 1588, Venet. p. 11, b.]

<sup>9</sup> [Paris, 1570; fol. 83, a.]

<sup>10</sup> *De vera religione*, c. 55, [Opp. Tom. I. p. 517, A.]

and whose lives were examples for us to follow: and in respect there are sundry saints for whom there is no proper office, to retain one day to praise God for the generality of all, and beg of him that we may follow their pattern in all virtuous and godly living. This if any mislike, I intreat him to pardon me if I join not with him; and if he will add more, to give me leave to think he attributes to them (by what name soever he style it) that is only due to the divine Majesty.

22. For purgatory, however it might be held a private opinion, yet certainly as an article of faith it could not be; for the Greeks, who have ever <sup>1</sup>constantly denied it, were in communion with the church of Rome till <sup>2</sup>1238, after which only they began to be accounted schismatics, not so much for their opinions, as denying subjection to the see of Rome; for some of them coming to Rome, 1254, <sup>3</sup>*de articulis fidei et sacramentis fidei satis tolerabiliter responderunt*—so that questionless the historian could not then hold purgatory an article of faith, when those, who did affirm *Nullum purgatorium est*, did give a tolerable account of their faith. Our divines therefore charge these 189 opinions <sup>4</sup>only as ‘fond things vainly invented, and grounded upon no warranty of scripture, but rather repugnant to the word of God;’ that is, as I have said before, they deny them to be articles of faith.

23. In like manner, having first <sup>5</sup>declared the bread we break, in the holy communion, to be a partaking of the body of Christ, and the cup of blessing of his blood, they censure transubstantiation, or the change of the substance of bread and wine, as <sup>6</sup>‘what is not proved by holy writ, and therefore no article of faith, &c. And indeed how could they say less of so doubtful a tenet, so newly crept in, that had burned so many, was so contrary to the ancient doctrine even of the English church, as the Saxon homily yet remaining in an old MS., with this title, “A book of catholic Sermons to be repeated each year,” doth

<sup>1</sup> *Errores Gracorum in ‘Fasciculo Zisaniorum’* MS. fol. 186, b, col. 1; in *Bibliotheca Archiepiscopi Armachani*.

<sup>2</sup> *Mat. Paris, Hist. Minor, ad an. 1237, 1238. Vid. Hist. Major, A.D. 1237, p. 457, l. 25; p. 465, l. 22.*

<sup>3</sup> *Ibid. p. 892, l. 28.*

<sup>4</sup> *Art. xxii.*

<sup>5</sup> *Art. xxviii.*

<sup>6</sup> *Vid. Bellarmin. de Sacrament.*

*Eucharist. Lib. II. c. 23: [in Disputat. Tom. III. p. 160, b.]*

<sup>7</sup> *Liber catholicorum Sermonum per annum recitandus, p. 355. [The paschal Homily may be seen in ‘Divers Ancient Monuments in the Saxon tongue,’ edited by William L’isle of Wilburgham, Lond. 1638; in Wheloc’s Bede, p. 462; in Soames’s Bampton Lectures, pp. 428, et seqq.]*

undoubtedly assure us? It is true, some of late have strove to give an answer to it; as he that styled himself <sup>8</sup>bishop of Chalcedon, will have the author perhaps to have been an heretic; but that the time and title confutes, all <sup>9</sup>writers agreeing England to have been free from any heresy after St Gregory, till about the year 1166. If that therefore will not do, he hath another, viz. the sermon to make more for transubstantiation than what the protestants cite doth against it; yet is silent both where the words are in it, and who are the citers of them. For my part, to speak once for all, take the whole homily as it lies, not one piece torn from the other, and if the doctrine of it be such as he can digest, I know not why we differ. As for those two miracles, which some dislike so far as to think them infarced into the work, I confess them not to displease me at all; for if they were inserted to prove the verity of Christ's body in the sacrament, against those who held it bare bread, yet it must be after such a ghostly and spiritual manner as is there represented, without any other change in the substance of the bread and wine 'than is in the <sup>10</sup>water of baptism;' 'not bodily, but ghostly;' 'a remembrance of Christ's body offered for us on the cross.' [Which may in some sort be said profitable to the holy saints departed, as members of one <sup>11</sup>body with those yet remain upon earth, and whose joys may perhaps receive an increase at the last; without drawing the conclusion either of purgatory, transubstantiation, or propitiatory sacrifice (in other sense than the protestant can admit), but as <sup>12</sup>renewing the

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<sup>8</sup> Flores Hist. Eccl. Lib. i. c. 24, p. 91.

<sup>9</sup> "Ab hac et ab aliis pestibus hæreticis immunis semper exstitit Anglia, cum in aliis mundi partibus tot pullularerint hæreses. Ubi hanc insulam, expulsis Britonibus, natio possedit Anglorum, ut non jam Britannia sed Anglia diceretur, nullius unquam ex ea pestis hæreticæ virus ebullivit; sed nec in eam aliunde usque ad tempora regis Henrici secundi.....introivit." W. Neubrigensis, de rebus Anglicis, Lib. ii. c. 13. Vid. Pitseum, de illustribus Angliae scriptoribus, not. ad an. 1159, p. 220, [ed. Paris. 1619.]

<sup>10</sup> [In Wheloc's Bede, p. 470, 'Similiter quoque sancta illa baptisterii,' etc.:

p. 471, 'Non tamen *corporaliter*, sed *spiritualiter*,' and in like manner, pp. 472, 473: in p. 474, 'Hæc quidem eucharistia, que nunc ad altare Dei consecratur est *commemoratio* corporis Christi, quod pro nobis obtulit.]

<sup>11</sup> [“Nondum recuperunt lætitiam suam ne apostoli quidem, sed et ipsi expectant, ut ego lætitiae eorum particeps fiam.” Origen. in Levit. Hom. vii.] [Opp. Tom. II. p. 222, col. I, D.]

<sup>12</sup> [“Sepe ita loquimur, ut pascha propinquante dicamus, crastinam vel perendinam esse Domini passionem, cum ille ante tam multos annos passus sit, nec omnino nisi semel illa passio facta sit. Nempe ipso die Dominico dicimus, *Hodie Dominus resurrexit, cum,*

memory of his death, who was a sacrifice available not only for the living, the dead, but those are yet unborn. And therefore the homily doth not simply say the mass to be profitable <sup>1</sup> both for the living and the dead, but with the qualification, ‘as it hath been often declared,’ viz. that in it is a renewing the memory and a representation of his passion. And that the catholic church did understand this and no other propitiation or sacrifice, to have been in the eucharist, is plain by <sup>2</sup>Peter Lombard, who writ after this homily, and St Augustine long before: and our Lyndewode, who went not many years before the reformation, <sup>3</sup>teacheth *sacrificium sic dictum, quia prece mystica consecratur pro nobis in memoriam Dominicæ passionis; et hoc pertinet ad corpus Christi.*]

24. And this may serve for answer to that his Achilles, by which his doctrine of transubstantiation <sup>4</sup>*manifestius patebit*, of Odo archbishop of Canterbury, about 940, converting miraculously the eucharist *in formam carnis, ad convincendum quosdam, qui suo tempore cœperunt de ea dubitare*. To which I shall first remember, that when <sup>5</sup>St Augustine was pressed with certain miracles of Donatus and Pontius, which the Donatists urged to prove the truth of their doctrine, he gives this answer, *Removeantur ista vel figmenta mendacium hominum, vel portenta fallacium spirituum; aut enim non sunt vera quæ dicuntur, aut si hæreticorum aliqua mira facta sunt, magis cavere debemus*; and after a learned discourse, he tells of some in the catholic church had happened in the time of St Ambrose, at Milan, upon which he gives this grave censure, *Quaecunque talia in catholica sunt, ideo sunt approbanda, quia in catholica sunt; non ideo ipsa manifestatur catholica, quia haec in ea sunt. Ipse Dominus Jesus cum resurrexisset a mortuis, et discipulorum oculis videndum manibusque tangendum corpus suum offerret, ne quid tamen fallacie se pati arbitrarentur,*

ex quo resurrexit, tot anni transierunt. Cur nemo tam ineptus est, ut nos ita loquentes arguat esse mentitos, nisi quia istos dies secundum illorum quibus haec gesta sunt similitudinem nuncupamus?”  
S. Augustin. ep. xxiii. [Opp. Tom. II. p. 58, c.]

<sup>1</sup> [Vid. Wheloc in Bed. p. 475.]  
<sup>2</sup> [Pet. Lombard. Sentent. Lib. iv. Distinct. xii. xiii. : S. Augustin. contra

Faustum Manich. Lib. xx. c. 21: de Fide ad Petrum, c. 19.]

<sup>3</sup> [Lib. III. de Celebrazione Missarum, cap. ‘Sacerdotes;’ ad verb. ‘sacrificium,’] [p. 229, not. t.]

<sup>4</sup> [Rich. Smith, Flores Hist. Eccl.], p. 90: Vid. W. Malmesbur. de Gestis Pontif. Lib. I. p. 291, l. 49, etc.

<sup>5</sup> De Unitate Eccl. c. xvi. [Opp. Tom. VII. p. 366, n; p. 367, n.]

*magis eos testimonii legis et prophetarum et psalmorum confirmados esse iudicavit, ostendens ea de se impleta, quæ fuerant tanto ante prædicta.* And a little after, *Hoc in lege et prophetis et psalmis [esse scriptum ipse] testatus est, hoc ejus ore commendatum tenemus. Hæc sunt causæ nostræ documenta, hæc fundamenta, hæc firmamenta.*

25. To apply this to our case; the church catholic hath ever held a true fruition of the true body of Christ in the eucharist, and not a sign, figure, or remembrance only, but as the French confession, <sup>6</sup>*que par la vertue secrete et incompréhensible de son esprit, il nous nourrit et vivifie de la substance de son corps et de son sang*—and therefore we can agree to these verses :

Christ was the Word that spake it:  
He took the bread, and brake it:  
And as that Word did make it,  
So I believe, and take it.

19<sup>1</sup>

Here is then a catholic sermon, commanded to be read in the church many years before the word “transubstantiation” was heard, as the doctrine of it, teaching me this participation with Christ, however true, yet is not fleshly, but spiritual; if therefore this miracle were not to convince those held the communicating of Christ in the sacrament, to have been no other than fantastical, and the bread to have been, and conveyed no other to us than bare bread, must not I, according to St Augustine, avoid it as the fancies of lying men, or the operation of deceiving spirits? And this as it may serve in general for all miracles, so in particular for that of late divulged, of a <sup>7</sup>poor man’s leg, cut off in Spain and buried, yet four years after restored: which if it be not some imposture, as the <sup>8</sup>golden tooth in Silesia, or of <sup>9</sup>Arnold Tilly—taken in Francis the second’s time not only by others, but by the very wife of Martin Guerre, for

<sup>6</sup> Vid. Chamier, de Eucharistia, Lib. x. c. 1, 2: [in Panstrat. Cathol. Tom. IV. p. 526, etc. ed. Genev. 1626. For the confession in French, see ‘Collectio Confessionum in Eccl. Reform.’ Lips. 1840.]

<sup>7</sup> [This was most probably the well-known story about the man of Saragossa, related in the ‘Memoirs of Cardinal de Retz,’ and employed by Hume in his

essay on Miracles.]

<sup>8</sup> [This is a tale respecting a boy in Silesia, who is said to have had a golden tooth. It is related by Horstius (Jacob.) in a treatise ‘De aureo Dente maxillari pueri Silesii,’ Lips. 1596; and was subsequently refuted by Dr Duncan Liddel.]

<sup>9</sup> [This imposture is narrated at length by De Thou, Histor. Lib. xxii. c. 12, etc.]

her husband, and which held the parliament of Toulouse so much perplexed to resolve—we must not (according to this holy man's doctrine) believe, for that or any of the like nature, farther than is proved by the law and the prophets. Yet there is one thing in my opinion very considerable; what the apostles did, were such, and in those places, no man could deny them: but those the church of Rome holds out for confirmation of her tenets, are either in corners, as Garnet's 'face in the ear,' with so dark proofs, as when they are looked into, *res tota cum contemptu dimissa est*; or else done in Italy, or Spain, where the Inquisition will suffer none but themselves [secretly] to examine the fact: whereas if they followed the apostles' example, they should be in England or Germany, that the protestants [as the Jews] might say, 'that indeed a notable miracle hath been done' 192 by our lady, 'is manifest to all, and we cannot deny it,' Acts iv. 16; [whereas, these will <sup>1</sup>not admit any thing to be a miracle, till by making for them they think fit to approve it for such.]

26. <sup>2</sup>Another will have that homily, at least what he takes on him to confute, to contain no other than catholic doctrine; and then falls upon the archbishop of Armagh, whom he conceives to have ill translated it out of the Latin, in which language there is not now found any ancient copy of it; <sup>3</sup>insisting, that though it were printed at London, 1623, it was not to be heard of when he writ—which was about 1631—insinuating as if more might be said, if he could see the author himself. For the first of these, it must be said to contain catholic doctrine on the grounds <sup>4</sup>before; but if it be that the church of Rome admits for such, I am glad to understand so much from him. For the primate of Ireland's translating the Latin to the disadvantage of the Romish, I shall give no answer, but that his English are indeed some parts of that sermon, but the Latin pieces of Bertram so agreeing with them, as they were undoubtedly taken out of him—by which he gives a far elder testimony to that author than *Œcolam-*

<sup>1</sup> [“Ante approbationem ecclesiae, non est evidens, aut certum certitudine fidei, de ullo miraculo quod sit verum miraculum.” *Bellarmin. de Notis Eccles. c. xiv.*] [Disputat. Tom. II. p. 298, n.]

<sup>2</sup> J. R. his spectacles to Sir Hum-

phrey Lynde, p. 135, § 4. [The author of this reply to the ‘Via Tuta’ was Robert Jenison, alias Frevel, a Jesuit. See Wood's ‘Athensæ Oxon.’ Vol. I. p. 603, ed. 1721.]

<sup>3</sup> p. 143, c. ix. § 10.

<sup>4</sup> § 23.

padius—who was, no question, a catholic doctor; but being so, why is he prohibited <sup>5</sup>by the Roman Index? Why, if at all permitted, must it be *excogitato commento*? For the other, that it could not be had in London only eight years after it was printed, I can say nothing, but some men will not hear [of] that they mislike; for that homily, of which (if he say any thing) he speaks, first set out by John Day, with the subscription of fifteen bishops attesting the truth of the copy, after 1623 reprinted by Henry Seal, always in the book of 'Acts and Monuments,' &c. <sup>6</sup>in the life of Henry VIII., and of late by Mr Wheloc put into Latin, and taken, without any intervening transcription, from the original Saxon—that he might not vary in a tittle—was with his translation of it printed at Cambridge, 1644, <sup>7</sup>amongst divers other excellent notes of that learned man upon Beda, that such as understand not the language, may 193 in that point see the doctrine of our forefathers.

27. A third <sup>8</sup>doctor, who cannot deny but it makes directly against transubstantiation, gives an answer I could not have expected, yet in my opinion more ingenuous: 'That it is unreasonable to produce the forceless authority of these Saxon homilies, which have no warrant of truth from any other but from ourselves;' and the margin, "These homilies were never heard of, but now of late among protestants only, framed and printed by themselves... without the warrant of any one indifferent witness." This is, I say, what I could not have looked for. Can any man imagine two archbishops, thirteen bishops, besides divers other personages of honour and credit, could have been induced to subscribe so palpable a lie? As it must be, if this and the other passages, by them there testified to be found in the ancient monuments of this church, were lately framed. But the old books that yet <sup>9</sup>remain, writ above five hundred years since, do enough vindicate the protestants, in that which I dare say no one of them who allege it do in their hearts believe, not to have been extant in them, as the archbishop first sent them to the press.

<sup>5</sup> Index Librorum prohibitorum, [ad calc. Concil. Tridentin. auctoritate papae editus. See Bp. Cosin's Histor. Tran- substan. p. 96, ed. Lond. 1675.]

<sup>6</sup> Fox, Tom. II. pp. 378, et seqq. ed. 1684.

<sup>7</sup> Wheloc's ed. of Bede, pp. 462, etc.

<sup>8</sup> Malone's 'Reply to Mr James Us- sher his Answer,' p. 320, [ed. 1627.]

<sup>9</sup> In Biblioth. Public. Cantab.

28. Of the little credit the council of Lateran in this point gained with us, I have <sup>1</sup>touched before: neither did Peckham's constitution, *sub panis specie simul dari corpus, &c.* speak home, nor was the thing ever absolutely determined here till 1382; so that the opinion of transubstantiation, that brought so many to the stake, had not in this isle an hundred and forty years' prescription before Martin Luther began; for in that year Wickliff, having propounded <sup>2</sup>*quod substantia panis materialis aut vini manet post consecrationem, &c.*, the archbishop taking it into <sup>3</sup>consideration, did not think fit to condemn the tenet, without farther advice with the university of Oxford, <sup>4</sup>where 194 *libratis singulis*, every saying weighed—and in especial, as it seems, those <sup>5</sup>concerned the eucharist—he did condemn some as heretical, others as only erroneous, and farther, <sup>6</sup>*singulos defensores earum imposterum sententia excommunicationis innodatus fore*, and gave command, <sup>7</sup>*ne quis de cætero cuiusunque status [aut conditionis existat] hæreses seu errores predictos, vel eorum aliquem teneat, doceat, prædicet seu defendat*. The <sup>8</sup>chancellor likewise of the academy, repeating Wickliff's opinions touching the holy communion, shews they had been diligently discussed by doctors in divinity, and professors in the canon law, *ac tandem finaliter est compertum atque judicio omnium declaratum, ipsas esse erroneas, fidei orthodoxæ contrarias, et determinationibus ecclesiæ repugnantes*: and then after all this search, delivers the doctrine of transubstantiation as the conclusion agreed to be held, *quod per verba sacramentalia a sacerdote prolatæ, panis et vinum in altari in verum corpus Christi et sanguinem transubstantiantur, seu substantialiter convertuntur sic, quod post consecrationem non remanent in illo venerabili sacramento panis materialis et vinum secundum suas substantias, [et naturas], sed secundum species earundem*. [After which only, it is observed other opinions <sup>9</sup>could not be with honour maintained in the English church, and the reason why is given, for that

<sup>1</sup> Cap. viii. § 37.

<sup>2</sup> In 'Fasciculo Zizaniorum' MS.: et apud Henr. de Knyghton, qui tunc vixit scripsitque, col. 2648, l. 8; col. 2654, l. 44.

<sup>3</sup> Ibid. col. 2649, l. 31.

<sup>4</sup> Ibid. col. 2650, l. 59.

<sup>5</sup> Hen. de Knyghton, [de Eventibus Anglie], col. 2654.

<sup>6</sup> [Ibid. col. 2650, l. 64.]

<sup>7</sup> Ibid. col. 2652, l. 67, etc.

<sup>8</sup> Ibid. col. 2654.

<sup>9</sup> [Ibid. col. 2657, l. 10, etc.]

*archiepiscopus Cantuariensis cum consensu et assensu coepiscoporum suorum et cleri sui eas pro falsis damnaverit*—so that we may safely conclude that till then they might, and this to have been] the first plenary determination of the church of England in the case, which yet how well it will be liked by such as hold the manner of conversion to be by a <sup>10</sup>succession of Christ's body to the substance of the bread, I leave others to dispute. But certainly the archbishop not <sup>11</sup>adventuring to proceed in it alone, nor by his own council, by <sup>12</sup>his extending what he did only to the future, both for punishment and tenet, and after <sup>13</sup>long enquiry concluding the truth of it, [what then might be no longer with honour defended]—enough proves it not to have been in former times fully resolved on in this church. And it may not here unfitly have a place that <sup>14</sup>John Tissington, a Franciscan, whom Pitseus—from Balaesus, not Leland, as he would have us think—affirms to have been an assistant in this dispute at Oxford, 1382, or as some 1381, cannot deny the truth of the assertion, *quod panis et vinum remanent post consecrationem in naturis suis, adhuc servatur laicis, et antiquitus servabatur.* [But that determination went no farther than only the converting the bread into the body of our Lord, and the wine into his blood. The consequences or dependencies of transubstantiation, as they are held out in the <sup>15</sup>council of Trent, and now taught by the Romanists, viz. *verum Domini nostri corpus, verumque ejus sanguinem sub panis et vini specie una cum ipsis anima et Divinitate existere; sed corpus quidem sub specie panis et sanguinem sub vini specie, ex vi verborum, ipsum autem corpus sub specie vini, et sanguinem sub specie panis, animamque sub utraque, vi naturalis illius connexionis et concomitantiae, qua partes Christi Domini, qui jam ex mortuis resurrexit, non amplius moriturus, inter se copulantur: Divinitatem porro propter admirabilem illam ejus cum corpore et anima hypostaticam unionem. Quapropter verissimum est, tantumdem sub alterutra specie, atque sub utraque contineri: totus enim et integer Christus sub panis*

<sup>10</sup> Vid. Bellarmin. de Eucharist. Lib. IV. c. 24, § ult.

<sup>11</sup> “Noluit Archiepiscopus ea vice plenarie procedere.” De Knyghton, ubi supra.

<sup>12</sup> “Imposterum, de cætero teneat.” Ibid.

<sup>13</sup> “Tandem finaliter.” Ibid.

<sup>14</sup> In Confession. contra Wickliff, MS. in Bibliotheca Archiepiscopi Armach. [Cf. Wood's ‘Hist. et Antiq. Oxon.’ Vol. I. p. 189, ed. 1674.]

<sup>15</sup> [Concil. Trident. Sess. xiii. c. iii.]

*specie, et sub quavis ipsius speciei parte, totus item sub vini specie, et sub ejus partibus exsistit*—these, I say, it did not meddle with, nor at all reach those profound speculations, that when we drink his blood we eat his body, and when we eat his body we drink his blood, as is there delivered. So that we may truly say of our ancestors as the Jesuits here, about sixty years since, did of the fathers: <sup>1</sup> *Rem transubstantiationis ne attigerunt.* As indeed cardinal <sup>2</sup> Bellarmine, not finding any ancient doctor or council directly to justify what he would have the tenet of the catholic church in this point, is fain to go no higher than the council of Trent; and yet we must believe it an article of faith, taught by the apostles, and from them derived down to us.]

And here it is not unworthy the remembering, that by the law of the Six Articles, 31<sup>o</sup> Henry VIII., c. 14—containing in effect the body of popery—no man was to die as an heretic but he who denied this tenet; all others only as felons, or men endangering the peace of the kingdom, by teaching contrary to what was publicly received. By which it likewise appears, in fixing the imputation of heresy, the English looked on their home determinations, not those of any foreign church.

29. But I do not take upon me to dispute matters controversial, which I leave as the proper subject to divines; it shall suffice only to remember, the church of England having with this great deliberation reformed itself in a lawful synod—with a care as much as was possible of reducing all things to the pattern of the first and best times—was interpreted (by such as would have it so) to depart from the church catholic; though for the manner, they did nothing but warranted by the continual practice of their predecessors, and in the things amended had antiquity to justify their actions: and therefore [the <sup>3</sup>late queen, when certain princes, 1559, interceded the Roman catholics might have churches permitted them here, told their agents there was no cause of such a concession, *cum Anglia non novam aut alienam amplectatur religionem, sed eam quam Christus jussit, prima et catholica ecclesia coluit, et vetustissimi patres, una voce et mente, comprobárint: and]* the archbishop of Canterbury, in a

<sup>1</sup> ['A sparing Discoverie of our English Jesuits,' etc. p. 13, by 'a secular priest,' ed. 1601.]

<sup>2</sup> [De Sacramento Eucharist. Lib. 1.]

c. 1, § 1.]

<sup>3</sup> [Camden. Annal. Elizabeth.] [p. 28, ed. 1625.]

provincial synod begun in St Paul's, the third of April, 1571, and all other bishops of the same province, gave especially in charge for all preachers, to ‘chiefly take heed that they teach nothing in their preaching which they would have the people religiously to observe and believe, but that which is agreeable to the doctrine of the old testament and the new, and that which the catholic fathers and ancient bishops have gathered out of that doctrine.’ So that nothing is farther off truth, than to say, such 196 as reformed this church made a new religion; they having retained only that which is truly old and catholic, as articles of their faith.

30. Thus was religion reformed, and thus by the queen established in England, without either motion, or seeking any new way not practised by our ancestors, but using the same courses had been formerly traced out unto [her by] them, for stopping profaneness and impiety, whenever they peeped in the church. And certainly, to my understanding, there can be none that will with indifference look upon those times, but he must (however he mislike the thing done) approve the manner of doing it. Yet the favourers of Rome ceased not to proclaim all had thus passed to have been heretical—without instancing any particular, as to say such a carriage was after the manner of heretics, ever condemned by the catholic church, and by orthodox writers in former times, or such a tenet in your confession was held heresy from this place of scripture anciently, by such holy fathers met in general council—and to raise stirs and commotions in the commonwealth, <sup>5</sup>to excommunicate the queen as *flagitiorum serva*, free her subjects of their allegiance, to give out we had <sup>6</sup>a ‘parliament religion,’ ‘parliament gospel,’ ‘parliament faith,’ and this before ever the thirty-nine articles, one main pillar of the English reformation, were confirmed by parliament.

31. Upon the whole, it is so absolutely false that the church of England made a departure from the church [catholic]

<sup>4</sup> The Book of canons of the same synod, printed by John Day, 1571. [See Cardwell's *Synodalia*, Vol. I. p. 126; § ‘Concionatores.’]

<sup>5</sup> Bulla Pii V. dat. Rom. 5 Kal.

Maii, A.D. 1570, [in the ‘Magnum Bularium Romanum,’ Tom. II. p. 324.]

<sup>6</sup> Harding's ‘Confutation of the Apology,’ [quoted in Jewel's ‘Defence’ of it, Part vi. p. 643; ed. 1570.]

—which is the ground and pillar of truth—as I am persuaded it is impossible to prove she did make the separation from the Roman itself; but that having declared in a lawful synod certain opinions, held by some in her communion, to be no articles of faith, and, according to the precedent of former times, and the power God and nature had placed in herself, redressed particular abuses crept into her, the pope and his adherents—without ever examining [for aught appears] what was the right of the kingdom in such-like cases, that had from all antiquity done the same—would needs interpret this a departing from the church, because he resolved to maintain for articles of faith, and thrust on others as such, some ambiguous disputable questions, the English did not think fit to admit into that number. To make a departure from Christ's church is certainly a very heinous offence, she never commanding aught but what is conformable to his will, nor <sup>1</sup>requiring her children to believe any thing as matter of faith, but what is immediately contained in the word of God, or by evident consequence drawn from it: and as she excludes no Christians from being her children, who by their own demerits deserve not to be out of the divine favour, so in opposing those who endeavour to procure some tenets to be admitted for hers, which cannot be deduced from that ground, we do not depart from her, but gainsay human errors and conceits, which they would infer to be her commands who acknowledges them not. But as St Augustine in a dispute with a Donatist, <sup>2</sup>*utrum schismatici nos simus an vos, non ego, nec tu, sed Christus interrogetur, ut judicet ecclesiam suam*—so may I, whether we are the schismatics or the church of Rome, Christ himself be the judge. But whether divided from the other, being matter of fact, let the histories of former times, the extraordinary proceedings of the see of Rome of late against the queen and this commonwealth be compared, and I am confident the judgment may be referred to any indifferent person (though of that belief) who made the separation, and whether this kingdom on so high provocations, did any thing would not have been paralleled by former times, had they met with the like attempts.

32. Neither can the crown, [or English bishops], in this

<sup>1</sup> Bellarmin. de Justificatione, Lib. III. c. 8, [in Disputation. Tom. IV. p. 242, a]: ibid. Lib. I. c. 10, [Tom. IV.

p. 209, r.]

<sup>2</sup> Contra Literas Petilian, Lib. II. c. 85, [Opp. Tom. VII. p. 93, n.]

reformation be any way said to have enterprised on the papal primacy—which, for aught I know, they might have acknowledged, so far as is expressed or deduced from holy scripture, or laid down in the ancient sacred councils, or the constant writings of the orthodox primitive fathers, and yet done what they did—<sup>198</sup> but to have exercised that authority always resided in them, for conserving the people under them in unity and peace, without being destroyed by the canons and constitutions of others; [our kings] not suffering a foreign power ruin them to whom they owed protection. In which they did not trench upon the rights of any, but conserved their own; imitating therein the imperial edicts of several princes, and of those were in possession of this very diadem, conformable to their coronation oath, [and <sup>3</sup>what the bishops take at the entering on their churches].

33. And from hence may be answered that which Rome brings as her Achilles, touching the succession and visibility of the protestants' church and doctrine, in all ages since Christ: for if theirs have been, it is impossible to say the others' have not—the former adding only more articles for a Christian to believe, which the latter will not embrace as needful: so that if theirs (as they so much glory) have had the continuance from the apostles, this needs must, which only denies some part of that they hold. “Protestants,” says Stapleton, “have many things less than papists; they have taken away many things which papists had, but they have added nothing.” And here, to my understanding, the Romanists require of us what lies on their part to prove; for we denying, in the succession of bishops from Cranmer, Wareham, even to Augustine, and so of the Britons, ever any one to have held the points we differ in to have been points of faith, in that degree of necessity they are now required—and for proof cite not only the Apostles', Nicene, Athanasian Creeds, but even that of Peckham, which we find so to differ from the late one set out by Pius IV., as we cannot but say it

<sup>3</sup> [“Neque est quod quis, ob litem hanc, Ignatium animo fuisse in apostolicam sedem infenso existimet vel ingratu, cum quæ juris essent suæ ecclesia defendere, juramento teneretur obstrictus, etiam æternæ vitæ dispendio. Non enim aliena retinere, sed sua possidere ex possessione prædecessorum ipse justum pu-

tavit,” etc. Baronius, Annal. Tom. X. ad an. 878, xlii.: which I confess I take the case of our English church and bishops.]

<sup>4</sup> ‘Fortresse of the Faith planted among us Englishmen;’ at the end of Bede's History, fol. 47, b, [fol. 103, a]; [ed. Antwerp. 1565.]

199 is unjust in them to press us to a profession in religion farther than our ancestors were—they, on the contrary, affirming all those holy bishops preceding, not only believed them as these now do, but did require them of others with the like necessity they now are—ought certainly to prove what they thus boldly affirm; which when they have done, truly for my part I shall think fit to yield: but till they do it, let them cease from proclaiming us heretics, who hold no other than the ancient faith at first delivered unto us.

But this as a point rather dogmatical for divines, than historical—the subject by me undertaken—I shall not here farther wade into.

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